RECORD, CASE No. [illegible]

159-349

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1891.

TERM No., [illegible].

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY,
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF IOWA.

FILED MAY 4, 1891.

RECORD, CASE No. 14,620.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1148.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

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1 In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

THE UNITED STATES OF AMERICA, *Northern District of Iowa,* } ss:

Pleas before the circuit court of the United States in and for the northern district of Iowa, western division, at a term begun and holden at Sioux City, in said district, on the first Tuesday of October, A. D. 1889, before the Hon. Oliver P. Shiras, judge of said court.

THE UNITED STATES OF AMERICA, Plaintiff, *vs.* THE SIOUX CITY & ST. PAUL R. R. Co., Elias F. Drake, and Amherst H. Wilder, Defendants. } October Term, A. D. 1889. Bill of Complaint. In Equity.

Be it remembered that heretofore, to wit, on the 4th day of October, A. D. 1889, a bill of complaint was filed in the said court, in the office of the clerk of the United States circuit court in and for the northern district of Iowa, in words and figures following, to wit:

To the judges of the circuit court of the United States:

The United States of America, an independent, sovereign nation, duly organized under its Federal Constitution, brings this action and bill of complaint against the Sioux City & St. Paul Railroad Company, a corporation duly organized under and by virtue of the laws of the said State of Iowa and a citizen of said State; Elias F. Drake, of Minnesota and a citizen of the State of Minnesota,
2 and Amherst H. Wilder, of Minnesota and a citizen of the said State of Minnesota; and thereupon your orator complains and says:

Par. 1. That the Congress of the United States, by an act entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," and approved May 12th, 1864, provided for a grant of lands to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the State of Iowa might select between the Big Sioux river and the west fork of the Des Moines river; also to said State, for the use of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, in South McGregor, in said State, in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it should intersect the said road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State, every alternate section of land, designated by odd numbers, for ten sections in width

on each side of said road; and said act further provided that in case it should appear when the lines or route of said roads were definitely located that the United States had sold any section or any part thereof included in said grant, or that any right of pre-emption or homestead settlement had attached thereto, or that the same had been reserved by the United States for any purpose whatever, then it should be the duty of the Secretary of the Interior to cause to be selected for the purpose aforesaid so much land in alternate sections or parts of sections designated by odd numbers as should be equal to such lands as the United States has sold, reserved, or otherwise disposed of, to be held by the State of Iowa for
3 the uses and purposes aforesaid: Provided that the lands so selected should in no case be located more than twenty miles from the lines of said roads.

Par. 2. And in said act it was further provided that the sections and parts of sections of land which by said grant should remain in the United States within ten miles on each side of said roads should not be sold for less than double the minimum price of public lands when sold, nor should any of such lands become subjected to sale at private entry until the same should have been first offered at public sale to the highest bidder at or above the minimum price aforesaid.

Par. 3. And it is further provided in said act that the lands granted by said act should be subject to the disposal of the legislature of Iowa for the purposes aforesaid and no other, and that said railroads should be and remain public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

Par. 4. And in said act it is further provided that the lands in said act granted should be disposed of by the State of Iowa for the aforesaid purpose only and in manner following, namely: When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial, workmanlike manner as a first-class railroad, then the Secretary of the Interior shall issue to the State patents for one hundred sections of land for the benefit of the road having completed ten consecutive miles as aforesaid; when the governor of said State shall certify that another
4 section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner for a like number, and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are from time to time made as aforesaid additional sections of land shall be patented to the State for the uses aforesaid and none other: Provided that if said roads are not completed within ten years from the several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa, for the purpose of securing the completion of said roads within such time, not to exceed five years, and upon such terms as the State shall determine: And provided fur-

ther that said lands shall not in any manner be disposed of or incumbered, except as the same are patented under the provisions of this act, and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

Par. 5. And in said act it was further provided that as soon as the governor of the State of Iowa shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said road, then it shall be the duty of the Secretary of the Interior to withdraw from the market the lands embraced within the provisions of this act.

Par. 6. And in said act it was further provided that the United States mail shall be transported on said routes and branch under the direction of the Post Office Department, as Congress may by law provide: Provided, until said price is fixed by law, the Postmaster General shall have power to fix the rate of compensation; a copy of which said act is hereto annexed as Exhibit No. 1, and to
5 which exhibit and to all other exhibits hereto attached your orator prays leave to refer and make a part of this bill of complaint the same as if the said exhibits were fully set forth in the body hereof.

Par. 7. That the legislature of the State of Iowa, by an act entitled "An act to accept of the grant and carry into effect the trust confer-ed upon the State of Iowa by an act of Congress entitled 'An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State,' approved April 3rd, 1866," accepted the said grant of lands so made by Congress and designated the defendant The Sioux City and St. Paul Railroad Company as the beneficiary thereof upon the terms and conditions in said act named. A copy of said act is hereto attached, marked Exhibit 2, and made a part hereof.

Par. 8. That the legislature of the State of Iowa, by an act entitled "An act to accept the grant of lands to the State of Iowa," made by act of Congress of May 12th, 1864, and to carry out the provisions of the said act, entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved April 20th, 1866, repeated its acceptance of the grant of lands so made by the act of Congress and provided in the manner in which said lands should be held and conveyed, a copy of which act is hereunto annexed and marked Exhibit No. 3, and that said last act was afterward amended by an act approved on the 24th day of March, A. D. 1868, by correcting a clerical error therein, which last act is hereto attached as Exhibit No. 4.

Par. 9. That on the 19th day of September, 1868, the defendant The Sioux City & St. Paul Railroad Company filed in
6 the office of the secretary of the State of Iowa its written acceptance of the aforesaid grant of Congress and of the several acts of the legislature of the State of Iowa upon the terms, conditions, restrictions, and limitations therein contained. A copy of said written acceptance is hereto attached and marked Exhibit No. 5.

Par. 10. That on the 2nd day of April, 1867, the defendant The Sioux City & St. Paul R. R. Company located its line of road from Sioux City, in the State of Iowa, northward to a point on the south line of the State of Minnesota, in range forty west of the 5th P. M., the said line barely crossing the northwest corner of O'Brien county, in said State of Iowa, and within three miles of said northwest corner; and said defendant filed a map of said location in the General Land Office of the United States on the 17th day of July, 1867, which said line is designated on the annexed diagram or plat, Exhibit No. 6.

Par. 11. That on the 26th day of August, 1867, the Hon. Joseph S. Wilson, Commissioner of the General Land Office of the United States, by an order directed to the register and receiver of the United States land office at Sioux City, Iowa, withdrew from sale and entry the public lands for twenty miles on either side of said line as located by said company and indicated by said map filed as aforesaid.

Par. 12. That by the location of said line and the filing of said map as aforesaid and the withdrawal of said lands as aforesaid the lands embraced in and covered by said act of Congress and the said several acts of the General Assembly of the State of Iowa became definitely fixed and determined, and the said defendant, The Sioux City & St. Paul Railroad Company, could not earn or acquire
7 title to any of said lands without first constructing its said road upon the said line or route in the time and in accordance with the terms and conditions, restrictions, and limitations named in said act of Congress and the said several acts of the General Assembly of the State of Iowa.

Par. 13. That the State of Iowa has never selected and, as your orator believes, has never been requested to select any point on the south line of the State of Minnesota between the Big Sioux river and the west fork of the Des Moines river as the terminal point of the said line of railroad from Sioux City, Iowa, to the south line of said State, as prescribed in said act of Congress.

Par. 14. That the defendant The Sioux City & St. Paul Railroad Company has never constructed any railroad from Sioux City, Iowa, to the south line of the State of Minnesota, and has never constructed any railroad whatever along or upon the line or route located by it, as shown by the aforesaid map of the definite location, filed in the office of the Secretary of the Interior of the United States July 17th, 1867, and has never completed the construction of any line of road between the aforesaid points; and your orator avers that by the failure of the said defendant, The Sioux City & St. Paul Railroad Company, to construct its line of road from Sioux City, Iowa, to a point on the southern boundary line of the State of Minnesota, as provided in said act of Congress, your orator has been deprived of the benefits reserved to it by the aforesaid act of Congress, viz:

First. It has been deprived of the use of a railroad from Sioux City, Iowa, to the south line of the State of Minnesota and connect-

ing with a railroad in O'Brien county, Iowa, intersecting
8 said Sioux City & St. Paul railroad and running thence eastward to McGregor, in the State of Iowa, upon which the United States might transport its troops and any of its property free of all toll or charges for transportation.

Second. It has been deprived of the use of such road from Sioux City, Iowa, for the transportation of the United States mails at such price as Congress of the United States or the Postmaster General thereof might provide.

Par. 15. And your orator believes, and so charges the facts to be, that about the year 1872 the defendant The Sioux City & St. Paul Railroad Company, without any authority or consent from the Congress of the United States or the General Assembly of the State of Iowa, commenced the construction of a railrodd on the Minnesota State line, in range forty-one west, and constructed the same southward from the south line of said State of Minnesota to the town of Le Mars, Iowa; but complainant avers that the defendant never completed the construction of but five sections of ten consecutive miles of said road; and the complainant further avers that the aforesaid line of road, constructed as aforesaid, was not built upon the aforesaid line of definite location or upon any line authorized by the United States or of the State of Iowa, but departed therefrom throughout its entire length in distances varying from one mile to ten miles.

Par. 16. That thereupon, to wit, on the 10th day of October, 1872, and the 17th day of June, 1873, and the 25th day of January, 1875, patents were mistakenly and unlawfully executed and delivered by your orator, the United States of America, conveying to the State of Iowa, in trust, the legal title to all lands embraced within the ten and twenty mile limits on either side of the line of the said railroad as located by the defendant The Sioux City
9 & St. Paul Railroad Company from Sioux City, Iowa, to the south line of the State of Minnesota, not theretofore disposed of, and amounting in the aggregate to 407,870.21 acres of land.

Par. 17. That the State of Iowa, trustee as aforesaid, has heretofore caused to be patented to the defendant The Sioux City & St. Paul Railroad Company 322,412.81 acres of the land patented to the State of Iowa as aforesaid, which said lands were so patented to the said defendant unlawfully and mistakenly and notwithstanding the failure of said Sioux City & St. Paul Railroad Company to construct its said road in accordance with the terms and conditions of the said act of Congress and the several acts of the legislature of the State of Iowa.

Par. 18. That of the lands referred to in parragraph 17 hereof 41,687.52 acres were, by decree of the United States circuit court rendered at Des Moines, Iowa, May 21st, 1886, pursuant to the mandate and decree of the Supreme Court of the United States, set apart and confirmed to the Chicago, Milwaukee and St. Paul Railroad Company, successor of the McGregor Western Railroad Company, as inuring to the said Chicago, Milwaukee & St. Paul Railroad Company under the terms and conditions of the said act of Congress;

but complainant avers that the said defendant, The Sioux City & St. Paul Railroad Company, and its grantees still hold the legal title to the remainder of the lands, to wit, 280,725.29 acres, and have never relinquished or reconveyed the same to the United States or the State of Iowa.

Par. 19. That there was embraced in the odd-numbered sections of the first five sections of the ten consecutive miles of the ten-mile or place limits of the line of road definitely located by the
10 defendant The Sioux City & St. Paul Railroad Company as aforesaid, commencing at the Minnesota State line and running thence southward, only 314,346.54 acres of land; and your orator further avers that of this amount one-half the odd-numbered sections or its equivalent in indemnity lands lying within the common ten-mile limits of the railroad of said last-named defendant at the point of intersection thereof with the said McGregor Western railroad did, by the terms of said grant, inure to the said McGregor Western Railroad Company or its assigns, to wit, 34,909.38 acres of land; and the complainant therefore avers that if by reason of the construction of the aforesaid five sections of ten consecutive miles of road the defendant The Sioux City & St. Paul Railroad Company earned and became entitled to any of the lands included in said grant and patents to the State of Iowa it did thereby earn no more than an amount equal to the total number of acres embraced in the odd-numbered sections of the aforesaid fifty miles of road as located, less one-half the odd-numbered sections lying in the aforesaid common ten-mile or overlapping limits, viz., 279,237.16 acres in all.

Par. 20. That by reason of the foregoing facts the said defendant The Sioux City & St. Paul Railroad Company, its grantess and assigns, now hold the legal title to the aforesaid 280,725.29 acres of land, which, less the said 279,437.16 acres of land, leaves 1,288.13 acres of land patented to said defendant in excess of the total number of acres which it was able to earn under the terms of said act of Congress, if any, by the construction of the aforesaid five sections of ten consecutive miles of road; that complainant has demanded of said defendant that it reconvey said land to the United States
11 of America, but defendant has at all times failed and still fails and refuses so to do; and complainant therefore avers that it is entitled to recover herein of said last-named defendant the said 1.288.13 acres of land from the most remote of the indemnity lands last patented to said defendant in the last section of ten consecutive miles of said road as aforesaid; if the same be found to have been sold to innocent purchasers, the value thereof, viz., $25,000.00.

Par. 21. That of the lands referred to in parragraph 16 hereof the State of Iowa still holds the legal title as trustee as aforesaid to the following-described lands, situated in the counties of O'Brien and Dickinson, in the State of Iowa, to wit:

12 *Dickinson County.*

Description.	Section.	Township.	Range.	Acres.
All	15	98	38	640.00
N w ¼	17	98	38	160.00
				800.00

O'Brien County.

S ½ of n w ¼ & s w ¼	9	95	40	240.00
S w ¼ of n w ¼	7	97	40	36.50
W ½	5	95	41	318.64
All	7	95	41	602.00
S e ¼ & s w ¼ & s ½ of n ½	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W ½	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
N e ¼ of n w ¼	3	96	41	39.94
S e ¼ of n e ¼	15	96	41	40.00
S w ¼ of s w ¼	13	97	41	40.00
E ½ of s w ¼ & n e ¼ of s e ¼	35	97	41	120.00
All	1	95	42	641.36
N ½ s w ¼, n ½ of s e ¼, & s e ¼ s e ¼	5	95	42	590.82
S e ¼ n w ¼, w ½ n w ¼, & s e ¼	7	95	42	390.41
All	9	95	42	640.00
S ½ n e ¼, s ½ n w ¼, & s ½	11	95	42	560.00
13				
All	15	95	42	640.00
All	17	95	42	640.00
E ½ n e ¼, w ½ s w ¼, s e ¼ s w ¼, & s e ¼	19	95	42	353.49
All	21	95	42	640.00
All	23	95	42	640.00
All	27	95	42	640.00
S ½	29	95	42	320.00
E ½ n e ¼ & s e ½ n w ¼	31	95	42	120.00
All	3	96	42	646.16
S ½	5	96	42	320.00
N w ¼ n e ¼ & e ½ s e ¼	7	96	42	120.00
All	11	96	42	640.00
All	15	96	42	640.00

O'Brien County—Continued.

Description.	Section.	Township.	Range.	Acres.
W ½	17	96	42	320.00
S w ¼ n e ¼, s e ¼ n w ¼, & n w ¼ n w ¼	19	96	42	116.17
All	23	96	42	640.00
All	29	96	42	640.00
E ½ s e ¼	31	96	42	80.00
All	33	96	42	640.00
All	3	97	42	595.60
S w ¼ n e ¼, n e ¼ n w ¼, and n w ¼ s e ¼	7	97	42	120.00
All	9	97	42	640.00
All	17	97	42	640.00
E ½ n e ¼ & e ½ s e ¼	19	97	42	160.00
All	25	97	42	640.00
S ½	29	97	42	320.00
S e ¼ n e ¼ & n e ¼ s e ¼	31	97	42	80.00
S ½	33	97	42	320.00
14 All	35	97	42	640.00
				21,179.85

Recapitulation.

Dickinson county	800.00
O'Brien county	21,179.85
	21,979.85 acres.

15 Par. 22. That more than fifteen years have elapsed since the passage and approval of said act of Congreee and the acceptance thereof upon the terms, conditions, limitations, and restrictions therein named by the defendants The Sioux City & St. Paul Railroad Company, and during all of said time the said defendant has failed to construct and maintain or cause to be constructed and maintained any road from Sioux City, Iowa, to any point on the south line of the State of Minnesota, and has failed and refused to construct and maintain any railroad upon the line or route of said railroad as located by said defendant, and has failed to complete the construction of any railroad on or near the aforesaid line of location to or from Sioux City, Iowa, or cause the same to be done, and has during all of said time failed and still fails and refuses to perform the conditions and requirements of said grant as heretofor- stated herein.

Par. 23. And your orator further avers that at the date of the passage of the aforesaid acts of Congress and of the legislature of the State of Iowa and the acceptance thereof by said defendant, The Sioux City & St. Paul Railroad Company, a grant of lands had been made by the Congress of t-e United States to the State of Iowa to aid in the construction of a railroad from the city of Dubuque, Iowa, to a point on the Missouri river at or near Sioux City, Iowa, which said grant was approved May 15th, 1856, and that afterwards, by an act of the legislature of the State of Iowa, approved July 14th, 1856, the said grant was accepted by the State of Iowa and the lands thereby granted were disposed of, granted, and conferred to and upon the Dubuque and Pac-fic Railroad Company, a body corporate, created and existing under the laws of Iowa,
16 and said Dubuque and Pac-fic R. R. Co. located the line or route of its said road and filed the map of definite location thereof during the year 1856; that the aforesaid grant of May 12th, 1864, as definitely fixed and determined by the line of location of the Sioux City & St. Paul R. R. Co., passed adjacent to and over and upon the aforesaid grant to the said Dubuque and Pac-fic Railroad Company between Le Mars, Iowa, and Sioux City, Iowa, although said Sioux City & Sy. Paul Railroad Company located its line or route of definite location from Sioux City, Iowa, northward so as to make the least possible infringement of said grants, and by reason of said facts but a small amount of land could pass under said last-named grant between the aforesaid cities, and that by reason of the infringement of said grants there could be found within the whole of said grant of May 12th, 1864, including the indemnity limits thereof, sufficient lands to make ten sections for each mile of the whole of said road from Sioux City, Iowa, to the Minnesota line; and your orator believes and so charges the facts to be that the defendant The Sioux City & St. Paul Railroad Company, in bad faith and with intent to cheat, wrong, and defraud your orator and deprive it of the rights and benifites which constituted the consideration for making said grant and contract on its part, and with intent unlawfully and fraudulently to obtain the title to the whole of the lands so granted without constructing the whole of said railroad, commenced the construction of its said road at the south line of the State of Minnesota instead of from Sioux City, Iowa, as provided in said grant and built southward only as far as the said city of Le Mars, Iowa, the road so constructed being over that portion of the territory embraced within the said
17 grant where the fewest lands had been theretofore sold or disposed of by the United States; and thereafter the said defendant, having fraudulently obtained the issuance of patents to the State of Iowa in trust for the whole of the lands embraced within the place and indemnity limits of said grant, abandoned the construction of said railroad and has ever since wrongfully, fraudulently, and unlawfully failed, refused, and neglected to complete the constrcution thereof.

Par. 24. That the State of Iowa has never caused said railroad to be completed and has never disposed of the lands described in para-

graph 21 hereof for the purpose of completing said railroad or for any other purpose, and your orator avers that said lands have fully reverted to the United States of America under the terms and conditions of said act of Congress.

Par. 25. That your orator had demanded of the State of Iowa and the said Sioux City & St. Paul Railroad Company, more than ninety days prior to the commencement of this action, a reconveyance of the above-described lands and relinquishment of all claims of said defendant and said State thereto, — said defendant has at all times since said demand failed and refused to reconvey and relinquish the same to the United States.

Par. 26. That the defendants Elias F. Drake and Amherst H. Wilder each claim some lien or interest in and to the land hereinbefore described, but complainant avers that said pretended claims are void and constitute a mere cloud upon the title to said lands and are junior and inferior to the right, title, and claim of this complainant therein.

18 Par. 27. That the said State of Iowa is a sovereign State and under the Federal Constitution and Statutes cannot be sued in this court nor made a party defendant herein with the said Sioux City and St. Paul Railroad Company; but complainant is informed and believes that the said State of Iowa is ready and willing to abide by the final determination of this action and to execute said trust in accordance therewith; and if it shall appear by the answer of the defendant herein or otherwise in the progres- of the trial hereof that other parties are necessary parties defendant herein your orator asks leave to bring in said parties.

Forasmuch, therefor-, as your orator is without remedy, except in a court of equity, it prays the court that upon the hearing of this cause that said grant be adjusted in accordance with the laws of the Congress of the United States and the title to the lands described in paragraph 21 hereof be established and quieted in complainant as against the adverse claims of said defendants and each of them, and that said defendants and each of them be forever barred and stopped from having or asserting any title to said premises adverse to complainant; that the lands referred to in paragraph 20 hereof be ascertained and selected from the most remote of the indemnety lands patented to said company opposite the last section of ten consecutive miles constructed by defendant company, and that the title to said lands when so ascertained and selected be established and quieted in complainant against the adverse claims of each of said defendants, or if it be found that said defendant, The Sioux City & St. Paul Railroad Company, have disposed of said lands or any part thereof and that no lands remain to said company out of which the aforesaid lands may be selected that your orator have

19 judgment against said defendant for the value thereof, to wit, $25,000.00; that your orator have general equitable relief and costs of suit; and so your orator will ever pray.

May it please your honors to grant process by subpœna herein directed to the defendant The Sioux City & St. Paul Railroad Company, and also to the defendants Elias F. Drake and Amherst H.

Wilder, if process can be had upon said defendants within the State of Iowa, commanding them to appear and answer herein, but not under oath, verification of their several answers being hereby expressly waived, the several allegations in this your orator's bill contained.

W. H. H. MILLER,
Attorney General,
And E. C. HUGHES,
Special Assistant U. S. Attorney.

20 STATE OF IOWA, } ss:
Clay County, }

E. C. Hughes, being duly sworn, deposes and says that he is attorney for complainant in the foregoing action; that he has read the foregoing bill of complaint — knows the facts therein set forth, and the same are true as he verily believes; that such knowledge is gained from a personal examination and inspection of the several acts of the Congress of the United States and the General Assembly of the State of Iowa therein referred to and of the original maps, plats, and records or duly certified copies thereof relating to said grant and the acts of defendants thereunder, and that he has personal knowledge of the facts pertaining to the construction of said railroad.

——— ———.

Subscribed in my presence and sworn to before me by the said E. C. Hughes this — day of ———, 1889.

——— ———,
Notary Public in and for Clay County, Ia.

21 EXHIBIT "No. 1."

An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux river and the west fork of the Des Moines river; also to said State for the use and benifits of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street South McGregor, in said State, in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State line in the county of O'Brien in the said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said road but in case it shall appear that the United States have, when the lines or

routes of said roads are definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections
22 above specified so much land, in alternate sections, or parts of sections designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved or otherwise appropriated, or to which the right of homestead, settlement or pre-emption has attached as aforesaid, which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid: Provided, that the lands so selected shall in no case be located more than twenty miles from the lines of said roads: Promided further, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any subject of internal improvement or other purpose whatsoever, be and the same are hereby reserved and excepted from the operations of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way, shall be granted subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which by such grant shall remain to the United States within ten miles of each side of said roads shall not be sold for less than double the minimum price of public lands when sold, nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid: Provided, that actual *bona fide* settlers under the pre-emption laws of the United
23 States, may after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the increased minimum price.

And provided also, that settlers under the provisions of the *of* homestead law, who comply with the terms and requirements of said act shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

SEC. 3. And be it further enacted, That the land hereby granted shall be subject to the disposal of the legislature of Iowa, for the purposes aforesaid, and no other; and the said railroad shall be and remain public highways for the use of the Government of the United States, free of all toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. Be it further enacted, That the lands hereby granted shall be disposed of by the State, for the purpose aforesaid only and in manner following, namely: When the governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, sub-

stantial and workmanlike manner as a first-class railroad, the Secretary of the Interior shall issue to the State patents for one hundred sections of land for the benefit of the road having completed the ten consecutive miles as aforesaid. When the governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are from time to time, made as aforesaid additional sections of lands shall be patented as aforesaid,
24 until said roads or either of them are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid, and none other; Provided, that if said McGregor Western Railroad Company or assigns, shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in this act, then the State may resume its grant, and so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time, as the State shall determine: Provided further, that if said roads are not completed within ten years from their several acceptance of this grant, the said land hereby granted and not patented shall revert to t-e State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine. And provided further, that said lands shall not in any manner be disposed of or incumbered, except as the same are patented under the provisions of this act; and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid, shall revert to the United States.

SEC. 5. And be it further enacted, That as soon as the governor of the said State of Iowa shall file or cause to be filed with the Secretary of the Interior, maps designating the routes of said roads then it shall be the duty of the Secretary of the Interior to withdraw from the market the lands embraced within the provisions of this act.

SEC. 6. And be it further enacted, That the United States mail shall be transported on said roads and branch, under the direction
25 of the Post Office Department, at such price as Congress may by law provide. Provided, that until such price is fixed by law, the Postmaster General shall have power to fix the rate of compensation

SEC. 7. And be it further enacted, That there be, and is hereby granted to the State of Minnesota, for the purpose of aiding in the construction of a railroad from St. Paul to St. Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi, in the southern boundary of the State, in the direction of the mouth of the Big Sioux river four additional alternate sections of land per mile, to be selected upon the same conditions, restrictions, and limitations as are contained in the act of Congress entitled, "An act

making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of a certain railroad in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad, in said State," approved March 3rd., 1857. Provided, that the land to be so located by virtue of this section, may be selected within twenty miles of the line of said road, but in no case greater distance therefrom.

Approved May 12th, 1864.

26 CHAPTER 134.

Grant of Lands to Sioux City & St. Paul Railroad Company.

An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled; "An act for a grant of lands to the State of Iowa in alternate sections, to aid in the construction of a railroad in said State."

SECTION 1. Be it enacted by the General Assembly of the State of Iowa, That the lands, rights, powers and privileges conferred upon the State of Iowa by an act of Congress entitled; "An act to aid in the construction of a railroad in the State of Iowa," approved May 12, 1864, be and the same are hereby accepted upon the terms, conditions, and restrictions contained in said act of Congress.

SEC. 2. That so much of the lands, interests, rights, powers and privileges, as are or may be granted and conferred in pursuance of the act of Congress aforesaid, for the purpose of aiding in the construction of a railroad from Sioux City in the State of Iowa, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines river be, and are hereby disposed of, granted, and conferred upon the Sioux City and St. Paul Railroad Company, a body corporate existing under and by virtue of the laws of the State of Iowa.

SEC. 3. That said company shall locate and definately fix the line of route of said road as soon as practicable after the passage of this act, and shall file a map showing such line or route in the office of the governor of the State of Iowa, and also in the *fo*fice of
27 the Secretary of the State of Iowa; and it shall be the duty of the said governor after fixing his official signature thereto, to file, or cause to be filed such map in the office of the Secretary of the Interior. But the location of such line or route, however, shall be considered final only so far as to fix the limit and boundary within which lands may be selected under, and by virtue of said act of Congress.

SEC. 4. That said road shall be constructed upon the usual gague (gauge) of other first-class roads in this State, and the iron used in the track shall be of approved quality and pattern; and the said road shall be constructed and finished in a style and of a quality equal to the average of other first-class Western roads; and when the said road shall be intersected by any other railroad hereafter

constructed, it shall be the duty of the company receiving the benefit of this act to furnish all proper and reasonable facilities, and to join such other company in making all necessary crossings, turnouts, sidings, and switches, and other conveniences for the transportation of all freight and passengers over their roads and the rate of transportation shall not in any case exceed the regular tariff of charges on said road.

SEC. 5. The said company shall assent to and accept the grant by this act conferred, by a written instrument under the seal of such corporation, and signed by its president and secretary, and shall file the same in the office of the secretary of state of the State of Iowa within six months after the passage of this act.

SEC. 6. The said company is hereby authorized and empowered to select and designate the point upon the south line of the State of Minn., to which the said road shall be built, between the Big Sioux, and the west fork of the Des Moines rivers, as designated in said act of Congress.

28 SEC. 7. The company accepting the provisions of this act, shall at all times be subject to such rules, regulations and restrictions of rates for the transportation of passengers and freight as may be enacted and imposed by the General Assembly of the State of Iowa, not inconsistent with the provisions of this act and the act of Congress making the grant aforesaid.

SEC. 8. The said company accepting the grant of land under the provision of this act, shall take the same with the conditions imposed and the terms provided by this act, and in no event shall said company have any claim or recourse upon the State of Iowa by reason of the conditions imposed by this act.

SEC. 9. All persons, who, at the time the said grant was made held valid claims by actual occupation and improvement upon any of the lands embraced in said grant, shall be protected in the same and entitled to purchase and enter the same upon the terms and conditions provided in section- 1308 and 1309, chapter 55 of the revision of 1860.

SEC. 10. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Daily State Register, a newspaper published in Des Moines and the Sioux City Journal, a newspaper published in Sioux City, said publications to be without expense to the State.

Approved April 3rd, 1866.

I hereby certify that the foregoing act was published in the Daily State Register April 22d, 1866, and in the Sioux City Journal April 6th, 1866.

JAMES WRIGHT,
Sec. of State.

29 EXHIBIT No. 3.

An act to accept the grant of land to the State of Iowa, made by act of Congress, May 12th, 1864, and to carry out the provisions of said act, entitled;—"An act for a grant of land to the State of Iowa, in alternate sections to aid in the construction of a railroad in said State."

SEC. 1. Be it enacted by the General Assembly of the State of Iowa, That the lands, rights, powers, duties, and trusts conferred upon the State of Iowa by an act of Congress, approved July 12th, 1864, entitled;—"An act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," are hereby accepted by said State, upon the terms, conditions, and restrictions contained in said act of Congress.

SEC. 2. Whenever any lands shall be patented to the State of Iowa, in accordance with the provisions of said act of Congress, said land shall be held by the State in trust for the benefit of the railroad company entitled to the same by virtue of the said act of Congress, and to be deeded to said railroad company as shall be ordered by the legislature of the State of Iowa, at its next regular session or at any session thereafter.

SEC. 3. This act being deemed by the General Assembly of immediate importance, shall take effect, and be in force from and after its publication in the Iowa State Register, and Iowa Homestead papers, published at Des Moines, Iowa.

Approved April 20th, 1866.

I hereby certify that the foregoing act was published in the Iowa State Register, on the 2nd day of May 1866, and in the Iowa Hom'-stead on the 10the day of May, 1866.

JAMES WRIGHT,
Secretary of State.

30 EXHIBIT No. 4.

An act to amend an act approved April 20th, 1866, entitled "An act to accept the grant of land to the State of Iowa, made by act of Congress of May 12th, 1864, and to carry out the provisions of said act, entitled An act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," and to make effectual the acceptance by the State of Iowa to said grant of land.

Whereas, in said act of the General Assembly of the State of Iowa approved April 20th, 1866, the word "July" occurs in the first section thereof by mistake, instead of the word "May."

Therefore,

SECTION 1. Be it enacted by the General Assembly of the State of Iowa, That said act approved April 20th, 1866, is hereby ammended by striking out of the first section thereof the word "July," and by

substituting instead thereof the word "May" so that the date of approval of the act of Congress therein referred to will be correctly stated as having been May 12th, 1864, and which was intended to have been therein stated; and the acceptance of said grant of land, intended to be made by said act approved April 20th, 1866, is hereby ratified and confirmed.

SEC. 2. This act, being deemed by the General Assembly of immediate importance, shall take effect and be in force from and after its publicati-n in the Daily Iowa State Register and Iowa Homestead, newspapers published at Des Moines, Iowa.

Approved March 24th, 1868.

I hereby certify that the foregoing act was published in the Daily State Register March 27th, 1868, and in the Iowa Homestead April 1st, 1868.

ED. WRIGHT,
Secretary of State.

31 EXHIBIT No. 5.

Office of the Sioux City & St. Paul Railroad Company.

SIOUX CITY, IOWA, *Sept. 19th*, 1866.

At a meeting of the board of directors of the Sioux City & St. Paul Railroad Company held this day at Sioux City, Iowa, the following resolutions were unanimously adopted:

Resolved, That the Sioux City and St. Paul Railroad Company hereby assent to and accept the provisions of an act enacted by the General Assembly of the State of Iowa and approved April 3rd, 1866, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in said State from Sioux City, in said State of Iowa, to the south line of the State of Minnesota, between the Big Sioux and the west fork of the Des Moines River.'"

Resolved, That the president and secretary of the Sioux City & St. Paul Railroad Company be, and they are hereby, required to affix their signatures and the seal of said company to the above resolutions and have the same filed in the office of the secretary of the State of Iowa forthwith.

J. C. C. HOSKINS,
President Sioux City & St. Paul Railroad Company.

Attest: N. C. HUDSON,
Secretary Sioux City and St. Paul Railroad Co.

STATE OF IOWA, *ss:*

OFFICE OF SECRETARY OF STATE.

Filed in this office this 25th dya of Sept.

[Endorsed:] No. 4. Equity. United States of America *vs.* Sioux City & St. Paul R. R. Co. *et al.* Bill of complaint. Filed O-t. 4th, 1889. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

32 I, W. M. Stone, governor of the State of Iowa, do hereby certify that this plat of the Sioux City and St. Paul railroad has been duly filed in my office by the railroad company and shows, in connection with the public surveys, the location of the line of route as actually surveyed by the Sioux City and St. Paul railroad from Sioux City, Iowa, to the south line of the State of Minnesota as definitely fixed in compliance with the act of Congress approved May 12, 1864, entitled "An act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," and with the act of the Legislative Assembly of the State of Iowa approved April 3rd, 1886, entitled "An act to accpet of and carry into effect the trust conferred upon the State of Iowa by an act of Congress approved May 12th, 1864, entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,'" granting certain lands to the railroad herein named.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines, Iowa, the 10th day of July, 1867.

W. M. STONE.

[The Great Seal, the State of Iowa.]

Attested: ED. WRIGHT,
Sec. of State.

33 STATE OF IOWA, }
County of Woodbury. }

J. C. C. Hoskins, of *the* Sioux City, in said county and State, being duly sworn, deposeth and says that he is the chief engineer of the Sioux City & St. Paul Railroad Company and has been said engineer since the 22 day of September, A. D. 1866; that during the period above named he did actually survey and mark upon the *d*round the line or route of the "Sioux City & St. Paul railroad" from Sioux City to the boundary line between the State of Iowa and Minnesota, in the sections and at the times respectively designated by dates which are included between the flag-staffs upon and along the line of route of said railroad as delineated upon this map, showing the line of the public survey in connection with the surveyed line of the route.

J. C. C. HOSKINS,
Chief Engineer.

Sworn and subscribed this 2nd day of July, 1867, before me—
JNO. P. ALLISON,
Notary Public, Woodbury Co.

34 Office of the Sioux City & St. Paul Railroad Company.

SIOUX CITY, IOWA, *April 2nd*, 1867.

It is hereby certified that in pursuance of the act of the Legislative Assembly of the State of Iowa approved April 3rd, 1866, en-

titled "An act to accept of and carry into effect the trust conferred upon the State of Iowa by an act of Congress entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,'" approved May 12th, 1864, this map shows the location of the line and route of the road from Sioux City, Iowa, to the south line of the State of Minnesota, between the Big Sioux river and the west fork of the Des Moines river, as surveyed and definitely fixed in compliance with the said acts of Congress and General Assembly of the State of Iowa and in pursuance of the resolution of the board of directors of said company passed on the 22nd day of September, 1866, and that the date of the field-notes thereof are truly indicated along the line from station to station upon this map.

In testimony whereof the Sioux City & St. Paul R. R. Co. has caused the same to be signed by its president and engineer, and has attached hereto its corporate seal, at Sioux City, Iowa, on the day and year first above written.

J. C. HOSKINS,
President and Chief Engineer.

[SEAL.]

Attest: S. T. DAVIS, *Sec'y.*

(Here follows map marked p. 35.)

35½ (4–207a.) S. S. M. a.

F. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 17, 1889.

I, W. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed tracing is an exact copy of the map showing the definite location of the Sioux City and St. Paul railroad in Iowa, which was filed in this office July 17, 1867, and is now in its possession.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day year above written.

Seal United States General Land Office.

W. M. STONE,
Acting Commissioner of General Land Office.

Copy.

36 And afterwards, to wit, on the 9th day of October, A. D. 1889, there was filed in the office of the clerk of said court in said cause a subpœna in chancery; which subpœna in chancery is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern Dist. of Iowa, Western Division.

The President of the United States to the Sioux City & St. Paul Railroad Co., Elias F. Drake, & Amherst H. Wilder:

We command you and each of you that you appear before th

judge of the circuit court of the United States for the northern district of Iowa, at Sioux City, on the first Monday of Nov., it being the 4th day of Nov. next (A. D. 1889), to answer to the bill of complaint of the United States of America this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of such judgment being pronounced — you by default.

To the marshal of the northern district of Iowa: Returnable to the Nov. rule day, it being Monday, the 4th day of Nov., A. D. 1889.

Witness the Hon. Melville W. Fuller, Chief Justice of the
[SEAL.] Supreme Court of the U. S., at Sioux City, this the 4th day of Oct., A. D. 1889, and of the Independence the 113th year.

A. J. VANDUZEE,
Clerk U. S. C. C., Northern District of Iowa,
By J. H. BOLTON, *Deputy.*

37 (Copy of subpœna in chancery continued.)

MEMORANDUM.—The within defendants are notified that unless they enter their appearance in the clerk's office of said
[SEAL.] court, at Sioux City, on or before the day to which the above writ is retunable, as above stated, the complaint will be taken against them as confessed and a decree entered therein accordingly.

A. J. VANDUZEE,
Clerk U. S. C. C., Northern District of Iowa,
By J. H. BOLTON, *Deputy.*

(Endorsed:) No. 104. Equity. Subpœna in chancery. Circuit court of the U. S., northern district of Iowa. United States of America *vs.* S. C. & St. Paul R. R. Company *et al.* Returnable to rule day, first Monday in Nov., A. D. 1889. A. J. Vanduzee, clerk, by J. H. Bolton, deputy. Filed Oct. 9th, 1889. A. J. Vanduzee, clerk, by J. H. Bolton, deputy. —— ——, comp't's sol.

This writ came into my hands for servance on the 7th day of Oct. A. D. 1889, and I served the same on the within-named S. C. & St. Paul R. R. Co. on the 8th day of Oct., 1889, by J. H. Swan, a director of said railroad Co., no other officer of said Co. being found in this district, by delivering a true copy of the same to J. H.
38 Swan, at Sioux City, in the county of Woodbury and State of Iowa.

EDWARD KNOTT,
U. S. Marshal,
W. C. DAVENPORT, *Deputy.*

Marshal's fees:

Milage, — miles	$0 06
Service on 3	6 00
Copy	1 00
	$7 06

And afterwards, to wit, on the 4th day of November, A. D. 1889, there was filed in the office of the clerk of said court præcipes for appearance of respondents in said cause, which præcipes are in the words and figures following, to wit:

The United States Circuit Court, Northern Didyrict of Iowa.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
S. C. & ST. PAUL R. R. Co. *et al.*, Defendant-. } No. 104. Præcipe for Appearance.

The clerk of said court will please enter our appearance as att'ys for defendant R. R. Co. in above cause and docket the same on the equity docket.

J. H. &. C. M. SWAN,
Solicitors for S. C. & St. P. R. R. Company.

(Endorsed:) Filed Nov. 4th, 1889. A. J. Vanduzee, clerk, by J. H. Bolton, deputy.

39 The United States Circuit Court, Northern District of Iowa.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
S. C. & ST. P. R. R. Co., E. F. DRAKE, & A. H. WILDER, Defendant-. } No. 104. Præcipe for Appearance.

The clerk of said court will please enter our appearance as solicitors for defendant- Drake & Wilder in above cause and docket the same on the equity docket.

J. H. & C. M. SWAN,
Solicitors for E. E. Drake & A. H. Wilder, Trustees.

(Endorsed:) Filed Nov. 4th, 1889. A. J. Vanduzee, clerk, by J. H. Bolton, deputy.

And afterwards, to wit, on the 2nd day of December, A. D. 1889, there was filed in the office of the clerk of said court the answers of respondents in said cause; which answers are in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, and AMHERST H. WILDER, Trustees Defendant-.

Answer of Sioux City & St. Paul Railroad Company, one of the Defendants, to Bill of Complaint of the United States of America.

40 This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertain-

ties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answering saith:

Par. 2. That the defendant admits the allegations and averments set forth in paragraphs one, two, three, four, five, and six of the plaintiff's bill of complaint, wherein is set forth the act of Congress therein described and attached as Exhibit 1, and defendant begs leave to refer to and make a part of *his* answer the said act of Congress attached to the plaintiff's bill and marked Exhibit 1.

Par. 3. That the defendant admits the allegations and averment- of paragraphs seven and eight, wherein is set forth the acts of the legislature of the State of Iowa, attached as Exhibits Two, Three, and Four to the said bill of complaint, and prays leave to refer to said acts of the legislature of the State of Iowa and make the same a part of its answer in this cause.

Par. 4. That this defendant admits the allegations and averments set forth in paragraph nine of the plaintiff's bill of complaint, setting forth the acceptance on the part of the said railroad company of the aforesaid grant of Congress, and of the several acts of the legislature of the State of Iowa, and prays leave to refer to the said Exhibit 5 and make the same a part of its answer to the bill of complaint in this cause.

Par. 5. That on the 27th day of September, 1866, the
41 Sioux City & St. Paul Railroad Company commenced the location of its line of railroad at Sioux City, in the State of Iowa, and between that time and the fourth day of October of said year it definitely located and established *ise* line of road by surveying and staking the same upon the face of the earth from Sioux City to the south line of the State of Minnesota, at the point selected by the said company, as agent for the said State of Iowa for that purpose authorized and empowered, between the Big Sioux and the west fork of the Des Moines river-, being a point in range forty about equidistant from each of said streams; that said line is shown in Exhibit "A," attached to this answer, to which the defendant begs leave to refer.

That prior to the location of the said line or route the United States has partly, by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in the said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3, 1857, and partly by the act of Congress entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12th, 1864, being section seven of the act set forth and shown in Exhibit 1 of the complainant's bill, made a large and valuable grant of lands to the State of Minnesota for the purpose of aiding in the construction of a railroad in said State from St. Paul and St. Anthony via Minneapolis to a convenient point of

junction west of the Mississippi to the southern boundary of the State, in the direction of the mouth of the Big Sioux river, near which the town of Sioux City was and is situated, with which this defendant was expected to connect and form a continuous line, and
the said line of road was then located in the State of Minne-
42 sota to a point in township 104, in range 39, in said State, and
the line and route of the said Sioux City & St. Paul railroad was fixed and determined in part with reference thereto and for the purpose of making it possible and feasible to connect with said road and form a continuous line from St. Paul and Minneapolis to Sioux City, as contemplated in said act of Congress.

Par. 6. That on or about the 10th day of July, 1867, the said Sioux City & St. Paul Railroad Company filed a map showing the route of said road in the office of the governor of the State of Iowa, and also in the office of the secretary of the State of Iowa, and immediately after the filing of said map with the said governor and said secretary as aforesaid the said governor fixed his official signature thereto and filed or caused to be filed such map in the office of the Secretary of the Interior of the United States; that on the 16th day of July, 1867, the Secretary of the Interior by a letter of that date accepted of said map and transmitted the same to the Commissioner of the General Land Office, with directions *from* the said Commissioner to issue the necessary instructions to withdraw the said land so granted to the State of Iowa; a copy of which letter is hereto attached and marked as Defendants' Exhibit "B" and made a part thereof.

Par. 7. That on the 26th day of August, A. D. 1867, the Commissioner of the General Land Office of the United States acknowledged the filing of said map as being in accordance with the act of Congress approved May 12th, 1864, and by an order, directed to the register and receiver of the land office at Sioux City, Iowa, withdrew from sale or other disposal all the odd-numbered sections within
twenty miles on each side of said line as shwon and located
43 upon the map filed as aforesaid, and reserved and selected
the same as land inuring to the State of Iowa for the said Sioux City & St. Paul Railroad Company, and directed that the even-numbered sections within such limits be held for sale and disposed — only at the double minimum price of such public lands; a copy of which order is hereto annexed and marked Exhibit "C" and made a part hereof.

That the said order was accompanied by a map showing the ten and twenty mile limits of the said grant; that on the annexed diagram marked Exhibit "A" *is* shown the ten and twenty mile limits so designated and defined by said order, marked "ten-mile limits of the Sioux City & St. Paul railroad," "twenty-mile limits of the Sioux City & St. Paul railroad."

Par. 8. That in the year 1872 the said Sioux City & St. Paul Railroad Company commenced the construction of its railroad, and prior to the first day of October had constructed in Sioux City one and one-tenth miles of main track and three-fourths of a mile of side track for its use there and erected in said town its depots and large

and expensive machine shops, expending in such town therefor over one hundred and twenty thousand dollars, and during the same time, commencing with the point of connection on the south line of the State of Minnesota, where the land-grant railroad from St. Paul and Minneapolis provided for in the acts of Congress of March 3rd, 1857, and of May 12th, 1864, intersected said State line, which road was then just constructed by the defendant corporation, The Sioux City & St. Paul Railroad Company, having a land grant, as stated aforesaid, and forming a continuous line therewith, the said company constructed, as a first-class railroad and in full compliance with
the acts of Congress and the act of the legislature of the State
44 of Iowa aforesaid, in a southwesterly direction, prior to June 15th, 1872, ten miles of said road, and ten miles more in like manner prior to July 15th, 1872, and ten miles further in like manner prior to August 10th, 1872, and twenty miles further in like manner prior to September 10th, 1872, and six and one-fourth miles further in like manner prior to September 25th, 1872, to the village of Le Mars and to a connection with the Iowa Falls and Sioux City railroad, then and still being run and operated by the Illinois Central Railroad Company, over which it obtained the right to run and operate to Sioux City, a distance of twenty-four miles, and since which time it has continued to run and operate in connection with the company in the State of Minnesota from St. Paul to Sioux City.

Par. 9. That the line of road so constructed is substantially upon the located line of the said Sioux City & St. Paul Railroad Company, and the said line upon which the said road has been constructed has been accepted and approved both by the Land Department of the United States and the State of Iowa as having been built and constructed in full compliance with the said act of Congress and of the legislature of the State of Iowa, both as to its line and manner of construction.

And that from and after the said time the said Sioux City & St. Paul Railroad Company and its successors have operated the said road from Sioux City, in the State of Iowa, as a continuous line to St. Paul and Minneapolis, and has carried and transported the United States mails over the said line of road between said points and intermediate points under the direction of the Post Office Department and at the price as fixed by law by the Postmaster General of the United States.

Par. 10. That on the 26th day of July, 1872, Cyrus C. Car-
45 penter, then governor of the State of Iowa, certified to the Secretary of the Interior of the United States that two sections had been constructed from the south line of the State of Minnesota southerly, in the direction of Sioux City, through the counties of Osceola and O'Brien, in the State of Iowa, in accordance with the provisions of the act of Congress aforesaid, approved May 12th, 1864, and that each of said sections comprised ten consecutive miles of road, in all twenty miles of road, upon which the cars were then running, and the same was constructed as aforesaid and completed in good, substantial manner in all respects as a first-class road; and on the 10th day of August, 1872, the said governor certified to the

said Secretary of the Interior, in like manner and form, that another section of ten consecutive miles was in like manner constructed and completed; and on the 4th day of February, 1873, the said governor certified to the said Secretary of the Interior, in like form and manner, the construction and completion of two more sections of ten miles each of such railroad, making in all fifty miles so certified.

Par. 11. That on the 15th day of October, 1872, the Secretary of the Interior caused to be made and patented to the State of Iowa for the use and benefit of the Sioux City & St. Paul Railroad Company, so constructing said railroad under said grant of the United States and the State of Iowa, a patent for one hundred ninety-one thousand four hundred sixty-four and four-hundredths acres of land; and afterwards, on the 17th day of June, 1873, the said Secretary of the Interior caused to be made and patented to the State of Iowa for the use and benefit of the Sioux City and St. Paul Railroad Company, so constructing said railroad under said grant of the United States and the State of Iowa, another patent, conveying to the said State for the use and benefit of the said railroad company
46 the further amount of two hundred five thousand three hundred and seventy-four and seventy-six hundredths acres; and on the 25th day of January, 1875, the said Secretary in like manner caused to be conveyed and patented to the State of Iowa for the use and benefit of said railroad company the further amount of ten thousand nine hundred eleven and forty-one hundredths acres; and on the 4th day of June, 1877, the Secretary of the Interior caused in like manner to be patented to the State of Iowa for the use and benefit of said railroad company one hundred sixty acres of said land, making a total amount patented by the United States to the State of Iowa for the use and benefit of the said railroad company four hundred seven thousand nine hundred and ten and twenty one-hundredths of an acre.

Par. 12. That of the land so patented to the State of Iowa for the use and benefit of the said railroad company there were found to be within the ten-mile limit of the located line of the said road two hundred thirteen thousand three hundred four and fifty-hundredths acres; that the remainder of the said lands so conveyed were those lands selected by the Secretary of the Interior, as provided by said act, within the twenty-mile limits of said road to make up for the deficiency of those lands which had been sold or that the right of pre-emption or homestead settlement had attached or that had been reserved by the United States for any purpose whatever within the ten-mile granted limits.

Par. 13. That the General Assembly of the State of Iowa, by an act entitled "An act authorizing and directing the governor to certify to the Sioux City & St. Paul Railroad Company certain lands named therein," approved March 13, 1874, authorized and
47 directed the governor of the State of Iowa to certify to the Sioux City & St. Paul Railroad Company all the lands held by the State of Iowa in trust for the benefit of the said railroad company, a copy of which is hereto annexed, marked Exhibit "D," and made a part hereof.

Par. 14. That in an action wherein The Chicago, Milwaukee & St. Paul Railroad Company; E. F. Drake and A. H. Wilder, trustees; John H. Gear, governor of the State of Iowa; James K. Powers, register of the State land office of the State of Iowa, were defendants, brought and prosecuted in the circuit court of the United States in the district of Iowa, and in the said circuit court of the United States such proceedings were had as that it was held, determined, and decreed in said cause that of the lands so patented as aforesaid to the State of Iowa for the use and benefit of the Sioux City & St. Paul Railroad Company seventy-nine thousand four hundred thirty-five and forty one-hundredths acres were wrongfully and mistakenly so patented and of right belong to and should have been patented and conveyed to the said Chicago, Milwaukee and St. Paul Railroad Company, and the said patents, in so far as they conveyed the said land for the use and benefit of the Sioux City & St. Paul Railroad Company, were annulled and held for naught and the said land set over and confirmed to the said Chicago, Milwaukee & St. Paul Railroad Company.

Par. 15. That of the land so awarded as aforesaid to the Chicago, Milwaukee & St. Paul Railroad Company twenty-five thousand two hundred sixty-nine and eighty-six hundredths acres were within the ten-mile or granted limits of the Sioux City and St. Paul Railroad Company and fifty-four thousand one hundred seventy-six and fifty-five hundredths acres were of those lands situated within the indemnity limits selected by the Secretary of the Inte-
48 rior to make up the deficiency of those lands which had been sold or to which the right of pre-emption or homestead settlement had attached or that had been reserved by the United States for any purpose whatever within the ten-mile or granted limits.

Par. 16. That after deducting the said lands so awarded and conveyed to the said Chicago, Milwaukee & St. Paul Railroad Company there remained of the lands so patented to the State of Iowa for the use and benefit of the Sioux City & St. Paul Railroad Company only one hundred eighty-eight thousand thirty-five and thirty-nine hundredths acres within the ten-mile or granted limits of the said company and one hundred forty thousand three hundred one and sixty-one hundredths acres within the twenty-mile idemnity limits of said company, which lands so patented to the said State for the use and benefit of the Sioux City & St. Paul Railroad Company were all of the lands lying within the ten and twenty mile limits of the located lines of the Sioux City & St. Paul Railroad Company along the whole line from Sioux City to the south line of the State of Minnesota, all other odd-numbered sections within the limits of said railroad company's grant having been sold or the right of pre-emption or homestead settlement had attached thereto or had been reserved by the United States for other purposes prior to the grant or May 12th, 1864, aforesaid to the State of Iowa taking effect thereon.

Par. 17. That the Sioux City & St. Paul Railroad Company has earned and is entitled to receive, have, own, hold, and possess, and

does so own, under and by virtue of said acts of Congress and of the General Ass-mbly of the State of Iowa and the full compliance by the said railroad company with the terms and conditions thereof for the building of the said five ten-mile sections of its road as aforesaid, five hundred sections of three hundred twenty thousand acres of land.

Par. 18. That the one hundred eighty-eight thousand thirty-five and thirty-nine hundredths acres so lying within the ten-mile limits of the said grant inure- to the said Sioux City and St. Paul Railroad Company by virtue of the said grant of the United States and of th- State of Iowa, so that there remained to be selected and conveyed to this company to make up the three hundred twenty thousand acres of land which it had earned and to which it was entitled to a conveyance on account of the construction in accordance with the said act of Congress and the legislature of the State of Iowa one hundred thirty-one thousand nine hundred sixty-four and sixty-one hundredths acres of land, which land was to be selected by the Secretary of the Interior from the odd-numbered sections of the public lands of the United States which had not been sold, reserved, or otherwise appropriated in the nearest tiers of sections in said ten-mile or granted limits.

Par. 19. That of the one hundred eighty-eight thousand thirty-five and thirty-nine hundredths acres lying within th- ten-mile or granted limits of the said grant inuring to the Sioux City & St. Paul Railroad Company by virtue of the said grant of the United States and the State of Iowa and the construction and certification of the said five ten-mile sections of its railway in accordance with the terms of the said grant and so conveyed and patented to the State of Iowa for the use and benefit of the Sioux City & St. Paul Railroad Company the said State of Iowa has certified to the said Sioux City & St. Paul Railroad Company one hundred sev-nty-two thousand seven hundred eighty-four and thirty hundredths acres of said land; that of the land described in the complainant's bill in paragraph 21 thereof the following-described lands, to wit:

O'Brien County.

Description.	Section.	Township.	Range.	Acres.
S w ¼ of n w ¼	7	97	41	36.50
W ½	5	95	41	318.64
All	7	95	41	602.00
N e ¼ of n w ¼	3	96	41	39.94
S e ¼ of n e ¼	15	96	41	40.00
S w ¼ of s w ¼	13	97	41	40.00
N e ¼ of s w ¼ & n e ¼ of s e ¼	35	97	41	120.00
All	1	95	42	641.36

O'Brien County—Continued.

Description.	Section.	Township.	Range.	Acres.
N ½ s w ¼, n ½ of s e ¼, & s e ¼ of s e ¼	5	95	42	590.82
S e ¼ n w ¼, w ½ n w ¼, & s e ¼	7	95	42	390.41
All	9	95	42	640.00
S ½ n e ¼, s ½ n w ¼, & s ½	11	95	42	560.00
All	15	95	42	640.00
All	17	95	42	640.00
E ½ n e ¼, w ½ s w ¼, s e ¼ s w ¼, & s e ¼	19	95	42	353.49
All	21	95	42	640.00
All	3	96	42	646.16
S ½	5	96	42	320.00
N w ¼ n e ¼ & e ½ s e ¼	7	96	42	120.00
All	11	96	42	640.00
All	15	96	42	640.00
W ½	17	96	42	320.00
S w ¼ n e ¼, s e ¼ n w ¼, & n w ¼ n w ¼	19	96	42	116.17
All	23	96	42	640.00
All	29	96	42	640.00
E ½ s e ¼	31	96	42	80.00
All	33	96	42	640.00
All	3	97	42	595.60
S w ¼ n e ¼, n e ¼ n w ¼, & n w ¼ s e ¼	7	97	42	120.00
All	9	97	42	640.00
All	17	97	42	640.00
E ½ n e ¼ & e ½ s e ¼	19	97	42	160.00
All	25	97	42	640.00
S ½	29	97	42	320.00
S e ¼ n e ¼ & n e ¼ s e ¼	31	97	42	80.00
S ½	33	97	42	320.00
All	35	97	42	640.00
Total	----	------	----	15,251.09

51 Amounting to fifteen thousand two hundred fifty-one and nine one-hundredths acres, lie within the ten-mile limit or granted limits of the said Sioux City & St. Paul railroad and are a part of the said one hundred eighty-eight thousand thirty-five and thirty-nine hundredths acres of the granted land inuring to the said Sioux City & St. Paul Railroad Company as aforesaid.

Par. 20. That of the lands selected by the Secretary of the Interior from the tiers of sections next to the said granted limits as aforesaid and conveyed to the State of Iowa for the use and benefit of the said Sioux City & St. Paul Railroad Company the said State has certified to the said company one hundred seven thousand nine

hundred forty and ninety-nine hundredths acres. The said company has earned and is entitled to have certified to it from the said i-demnity limits the further amount of twenty-four thousand twenty-three and sixty-three hundredths acres, and is entitled to have the said land selected from the nearest tiers of odd-numbered sections not otherwise sold, disposed of, or reserved to the said ten-mile or granted limits of the said road; that the land described in the bill of complaint, as follows:

Dickinson County.

Description.	Section.	Township.	Range.	Acres.
All	15	98	38	640.00
N w ¼	17	98	38	160.00
O'Brien County.				
S ½ of n w ¼ & s w ¼	9	95	40	240.00
S e ¼ & s w ¼ & s ½ n e ¼	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W ½	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
All	23	95	42	640.00
All	27	95	42	640.00
S ½	29	95	42	320.00
E ½ n e ¼ & s e ¼ n w ¼	31	95	42	120.00
Total				6,728.76

52 Consisting of six thousand seven hundred twen--eight and seventy-six hundredths acres, are a part and parcel of the said i-demnity limits lying nearest the said tiers of granted sections necessary to make up the amount or quantity of land to which the said Sioux City & St. Paul Railroad Company is entitled as aforesaid.

Par. 21. That the defendant has expended large sums of money in the care, management, and control of said lands, and has paid large sums of moner in taxes upon the lands set forth and described in the plaintiff's bill of complaint, and has in good faith and at great expense and cost built and constructed a good first-class railroad from the south line of the State of Minnesota, connecting at said State line with the railroad from Minneapolis and St. Paul to

the southern line of the State of Minnesota provided for in the act of Congress approved March 3, 1857, and May 12, 1864, heretofore referred to, so as to form a continuous line of road between said points to the town of Le Mars, in Iowa, a distance of fifty-six and one-four*ht* miles, *hw*ere the same connected with the Iowa Falls and Sioux City railroad, a land-grant railroad constructed under the land grant referred to in paragraph twenty-five of the plaintiff's bill of complaint, then and now being operated by the Illinois Central railroad, over which it obtained and still has the right to run and operate its trains jointly with the said Illinois Central railroad from Le Mars to Sioux City, and connecting also at Sheldon, in the county of O'Brien, with the railroad from McGregor, westwardly, provided for in said act of Congress of May 12th, 1864, and the said Sioux City & St. Paul Railroad Company and its successors have at all times since the year 1872 operated the said road continuously in a first-class manner from Minneapolis and St. Paul to Sioux City and furnished first-class railroad facilities and accom-odations to and through the said country as was intended by the Congress of the United States in providing said road, and the United
53 States has at all times been afforded, had, and enjoy- all the rights and benefits reserved to it for the transportation and carrying of the United States mail thereon between the said points and the connections provided for by the United States.

Par. 22. That at the time of the making of said grant to aid in the construction of said railroad and at the time of the location of the line of said railroad the country through which the same was located was a wild, unsettled prairie country for almost the whole distance from Sioux City to the south line of the State of Minnesota and thence northerly nearly to Mankato, in said State, there being at that time scarcely a settler except in the vicinity of Sioux City, and the lands were in a large part vacant and unsold Government lands, especially along the northern portion of said line; that to aid and encourage the settlement of this vast prairie country and develope its resources the United States had by an act of Congress of March 3, 1857, and section seven, act of May 12, 1864, made a large grant of land to the State of Minnesota to aid in the building a road from St. Paul and Minneapolis southwesterly to the south line of the State of Minnesota in the direction of Sioux City, with which the line from Sioux City to the south line of the State of Minnesota contemplated in section — of the act of May 12, 1864, was expected to connect, which road in Minnesota had then commenced its construction; that this defendant, at great cost and expense and with no immediate prospect of any remunerative business therefrom but in good faith to accomplish the intention and design of Congress in the settlement and development of the said country, promptly, in
54 good faith, constructed its railroad as aforesaid, thereby promoting the immigration and making it possible to settle and develope the same and adding largely to the wealth and prosperity of the said country; that the United States, by reason of said grant, location, and construction, held and fixed the price of the even-numbered sections of said grant at double the minimum price of Gov-

ernment lands and were enabled to and did sell and dispose of such even sections within the limits of said grant at said double minimum price; that at the time the line of the defendant's road was located there were no towns or villages along the whole line or in the adjacent country; that the Dubuque and Pacific Railroad Company referred to in the bill of complaint had located its line of railroad substantially as shown upon the map, Exhibit 1 of this answer; that the said grant afterwards passed to the Iowa Falls and Sioux City Railroad Company, which under the terms of the said grant of July 14, 1858, constructed its said road, building and constructing the same along the line northerly of its located line, as is shown in the diagram, which road was constructed prior to this defendant's road, so that when it came to the construction of its road it found the said road constructed *and* the town of Le Mars, one of the most important towns in the surrounding country, and one which it was desirable to supply with railroad facilities, and it was found that a shorter and better line could be found upon the line as constructed substantially as shown in Exhibit 1 of this answer, and the said line was so constructed and reported and was accepted by the State of Iowa and the Secretary of the Interior as a full compliance with the terms and conditions of the said act of Congress and the legislature of the State of Iowa.

55 Par. 23. That the Congress of the United States has at all times the disposal of the public lands of the United States and is alone competent to declare a forfeiture for a non-compliance with the conditions of a grant of land, and the said Congress of the United States has never by any act or resolution or other action taken declared that the said lands included and granted in the said act of May 12, 1864, should become forfeited, or resumed the same or provided any act or thing to be done of resumption by the land department, nor provided any laws or regulations by which a forfeiture could be found and adjudged by any court, office, or tribunal, and the said lands so included in and granted by said act of May 12th, 1864, to the State of Iowa and by the State of Iowa to this defendant have never become foefeited, nor has the title thereof so conv3yed ever reverted to the United States.

Par. 24. Defendant admits that the defendants Elias F. Drake and Amherst H. Wilder claim some lien or interest in and to the lands described in said bill of complaint, and allege that the said lien or interest in and to said lands is by reason of the fact that on the first day of August, 1871, the Sioux City & St. Paul Railroad Compnay made, executed, and delivered to Elias F. Drake and Alexander H. Rice, who afterwards resigned and Amherst H. Wilder was appointed in his stead, a certain trust deed or mortgage upon all the lands granted by the Congress of the United States by an act approved May 12, 1864, lying and being in the State of Iowa not hereafter patented or otherwise transferred by the United States or the State of Iowa to the said Sioux City and St. Paul R. R. Company or to which the said company might acquire title by reason of the said grant, together with other lands described in said trust deed

56 lying and situated in the State of Minnesota; *taht* a copy of

said trust deed is annexed to the answers of the trustees, E. F. Drake and A. H. Wilder, to which this defendant begs leave to refer as a part of its answer; that afterwards and on the 5th day of February, A. D. 1864, the said company made a farther confirmatory mortgage describing the said lands specifically and confirming the grant made in said trust deed of August 1, 1871, a copy of which is also attached to the answer of the said trustees, to which this defendant begs leave to refer; that there is still outstandi*dn* of the bonds set forth and described in the said trust deed a large amount, for *hw*ich no other provision was made for the security and payment except the land so described and contained in said deed of trust.

And this defendant denies all the said bill charged; without this, that there is any other matter, cause, or thing in the said compalainant's bill of complaint contained materi*la* or necessary for this defendant *ot* make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct.

That inasmuch as the paeties, plaintiff and defendants, are before the court consenting to its jurisdiction and invoking its aid to do justice and equity between the parties hereto as to the good conscience of y-ur honors shall deem right and just in the premises, that a decree shall be entered herein establishing and confirming the title of these defendants in and to the said lands described in said bill of complaint, and that the plaintiff's bill be dis-
57 missed and the defendants have such other and further relief as to this court should seem meet and proper.

J. H. & C. M. SWAN,
Solicitor for the Def't S. C. & St. Paul R. R. Co.

J. H. SWAN, *Of Counsel.*

(Here follows map marked p. 58.)

59 EXHIBIT "B."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *July* 16, 1867.

SIR: Herewith I transmit a map, duly authenticated, showing the definite location of the Sioux City and St. Paul railroad.

This map is accepted and will become the basis for the adjustment of the land grant made to the State of Iowa to aid in the construction of this road by the act approved May 12, 1864. You will issue the necessary instructions to local land officers to withdraw the land so granted to the State.

Very respectfully, your ob't servant,
O. H. BROWNING, *Secretary.*

Hon. Jos. S. Wilson, Commissioner of the General Land Office.

EXHIBIT "C."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *August 26th*, 1867.

Register and receiver, Sioux City land office, Iowa.

GENTLEMEN: The Sioux City & St. Paul Railroad Company of Iowa, under the act of Congress approved May 12, 1864, Statutes, vol. 13, p. 72, have filed and authenticated map of the survey and location of their road from Sioux City to a point on the southern boundary line of Minnesota, in township forty-one.

Enclosed is a diagram showing by green lines the 10-mile limit of the grant "in place" so far as the same falls to said road in your district, with the 10 additional miles indemnity limits, as indicated by yellow lines, to make up the indemnity.

You are hereby directed to withhold from sale or other disposal all the odd-numbered sections within said 10 miles on each side of the road and also within the additional 10 miles indemnity limits.

The register will proceed at once to lay down distinctly in pencil on the township plats the limits of the line of route with the 10-mile limits "in place" and the 10-mile indemnity limits.

The vacant, undisposed of, odd-numbered sections within the 10-mile limits of said road, as indicated in the diagram, inure "in place" to the State for said company, except wherein there exist pre-emptions having prior inceptions.

In virtue of the act of Congress approved March 27, 1854, Statutes, vol. 10, p. 269, the even sections within the granted limits

61 are subject to pre-emption at $2.50 per acre and must be dealt with accordingly and in like manner under the homestead law, which reduced the quantity to 80 acres.

This order will take effect from the date of its reception at your office, and you will advise this office of the precise time it may be received by you.

Respectfully, your obedient servant,

JOS. L. WILSON,
Commissioner.

EXHIBIT "D."

SECTION I. That the governor of the State of Iowa be, and he is hereby, authorized and directed to certify to the Sioux City and St. Paul Railroad Company *and* all lands which are now held by the State of Iowa in trust for the benefit of said railroad company in accordance with the provisions of section 2 of chapter 144 of the Laws of the Eleventh General Assembly.

SECTION II. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. III. This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and the State Journal, newspapers published in Des Moines, Iowa.

Approved March 13, 1874.

62 (Endorsed:) Circuit court of U. S., northern district of Iowa, western division. 104. Equity. United States of America *vs.* S. C. & St. P. R. R. Co.; E. F. Drake and A. H. Wilder, trustees. Original. Filed Dec. 2, 1889. A. J. Van Duzee, clerk, by J. H. Bolton, deputy. Answer of S. C. & St. P. R. R. Co.

63 In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY & ST. PAUL RAILROAD COMPANY; ELIAS F. DRAKE and AMHERST H. WILDER, Trustees, Defendants.

Answer of Elias F. Drake and Amherst H. Wilder, Trustees, to Bill of Complaint of the United States of America.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complain-t'- bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, for answering, say:

Par. 2. That they join in and adopt the answer of the Sioux City & St. Paul Railroad Company to the plaintiff's bill of complaint, and beg leave to refer to and make the same a part of the answer of these defendants, and in addition thereto further show:

Par. 3. That on the first day of August, 1871, there was made and executed to Elias F. Drake and Alex. H. Rice a certain trust deed or mortgage upon all lands granted by Congress by the act approved May 12, 1864, lying and being in the State of Iowa that might hereafter be patented or otherwise transferred by the United States or the State of Iowa to the said Sioux City & St. Paul Railroad Company or to which the said company might acquire title by reason of the said grant, together with other lands therein
64 described, a copy of which is hereto annexed, marked Exhibit "X," and made a part hereof; that afterwards the said Alex. H. Rice resigned as said trustee, and Amherst H. Wilder was duly appointed and substituted as such trustee; that afterwards and on the 5th day of February, A. D. 1884, the said Sioux City & St. Paul Railroad Company made, executed, and delivered to these defendants, Elias F. Drake and Amherst H. Wilder, a further assurance of title or confirmatory trust deed or mortgage specifically describing and identifying the said lands and confirming the title to all if said lands in these said trustees for the uses and purposes set forth in the aforesaid trust deed of August 1st, 1871; a copy of said confirmatory deed of the lands in O'Brien county is hereto annexed and marked Exhibit "G," a deed identical in form and

substance except the description of the lands being made for the lands in each county.

Par. 4. That the said mortgage or trust deed was given for the purpose of securing and providing for the payment of the principal and interest of two million eight hundred thousand dollars of bonds of the kind and form described in said trust deed; that under the terms, conditions, and requirements of said trust deed the said Sioux City & St. Paul Railroad Company issued two million eight hundred thousand dollars in such bonds and had the same duly countersigned by said trustees and sold and disposed of the same upon the market — sundry and divers persons throughout the country; that as the said railroad company have realized the money to pay or retire the said bonds or the holde-s thereof have applyed to have the sane exchanged for land in accordance with the terms and conditions of said trust deed, such number and amount of said bonds have been taked up and retired as the said money or lands applied for would pay and retire, and in pursuance of said
65 payment and exchange there has been two million one hundred seventy-five thousand dollars of said bonds retired, leaving six hundred twenty-five thousand dollars still outstanding and unpaid; that as to who are now the owners and holders of all said bonds these trustees are not informed.

Par. 5. That these defendants, trustees, and their beneficiaries, the holders of said bonds, are entitled to have their lien upon all the lands in the State of Iowa which enure to the Sioux City and St. Paul Railroad Company under tha act of Congress and the acts of the State of Iowa to which the said Sioux City and St. Paul Railroad Co. have become entitled by reason of compliance with the terms of said act, and all that the said company may hereafter become entitled to by reason of such compliance, and to subject all such lands to the payment of the said bonds according to their terms and conditions; and these defendants are informed and verily believe that it will require all the land described in said trust deed, both in the State of Iowa and Minnesota, to pay off and satisfy the said bonds.

Par. 6. That the lands to which these defendants are entitled in the State of Iowa are all that inure to the company within the granted limits of said road and sufficient land selected from the next nearest tiers of odd-numbered sections to said granted sections not otherwise appropriated to make up the amount to which the said Sioux City & St. Paul Railroad Company is entitled by reason of a compliance with said granting acts, whicha amount at this time, as these defendants are informed and believe, is at least three hundred and twenty thousand acres.

66 Par. 7. That the lands to which the defendant trustees are entitled and to which the holders of the bonds which they represent are — all the lands which the said Sioux City & St. Paul Railroad Company have earned and are entitled to have conveyed to it, which these defendants allege to be one hundred sections of land for each ten miles of road constructed in compliance with said act of Congress — were to be found and identified by taking and conveying said lands

first from the granted or ten-mile limits of said grant so long as there are any lands within said granted limits subject to the said grant; that if there should not be sufficient within the *the* said granted limits, then the Secretary of the Interior shall select from the next nearest tiers of odd-numbered sections to the granted limits sufficient to make the amount of one hundred sections for each of the five ten-mile sections which the said road has constructed; that it there has been conveyed to the said company or to the State for the use and benefit of said company any lands not earned by said company they are lands so patented or conveyed lying the farther*est* from the granted limits of the said road and are not any part or portion of the lands described in the bill of complaint; and these defendants allege and claim on their own behalf and on behalf of the remaining bondholders whom they represent that they are entitled in law and in equity to have the grant adjusted in accordance with the terms of the grant and to receive the identical lands to which their trust deed or security attaches, and that no other or different lands should be turned over to or held by said company in the settlement or adjustment of the grant.

67 Par. 8. That the lands which are described in the bill of complaint are a part of the lands to which these defendants' trust deed or mortgage applies and upon which they have a lien by virtue of said trust deed and the right to have the same sold under the terms and conditions thereof to pay the remainder of said bonds.

That the bonds were purchased in good faith and for a valuable consideration, and, relying upon the security of the said lands in said trust deed described and the funds arising therefrom, were used in the construction of said road, and the present owners and holders of said bonds are, as your defendants are informed and verily believe, purchasers in good faith, for valuable consideration, of the said bonds, and ought in justice, equity, and good conscience to be protected and the said lands set off to the said railroad company; and these defendants join in the prayer of the defendants to have its and their title established and confirmed and to have the bill of complaint dismissed.

J. H. & C. M. SWAN,
Solicitors for the Def's E. F. Drake & A. H. Wilder, Trustees.

J. H. SWAN, *Of Counsel.*

68 EXHIBIT X.

This indenture, made this first day of August, in the year one thousand eight hundred and seventy-one, witnesseth:

That whereas the Congress of the United States did by an act approved March 2, 1857, and by an act approved May 12, 1864, grant to the State of Minnesota certain lands hereinafter described, and did by an act approved May 12th, 1864, grant the certain lands hereinafter described to the State of Iowa, all for the purpose of aiding in the construction of a railroad from St. Paul, in the State of Minnesota, to Sioux City, in the State of Iowa, and which last-

named State granted the said lands in Iowa to the Sioux City and St. Paul Railroad Co.; and whereas the State of Minnesota did by various acts of its legislature grant said lands lying in the State of Minnesota to the said St. Paul and Sioux City Railroad Company, and by an act approved March 5th, 1869, authorize the last-named company to transfer such portion of its line of road to be built in Minnesota and such portions of its land grant as it should deem proper to the Sioux City & St. Paul Railroad Company of Iowa, authorizing the said last-named company to construct a portion of said road and to own, hold, and control such portion of said road and lands as should be so transferred; and whereas said companies made an agreement, dated March 3, 1871, by which the portion of said road lying between Saint James, in Minnesota, and the Iowa State line was to be built and owned by the Sioux City & St. Paul Railroad Company and by which all the title and interest in the lands hereinafter described and mortgaged and lying in the State of Minnesota was transferred to and was to become vested in said Sioux City & St. Paul Railroad Company for building said portions of road so transferred, by virtue of which several laws and acts done and by virtue of other laws, acts, and things the Sioux City & St.
69 Paul Railroad Company is entitled to own, sell, mortgage, and convey the lands hereinafter embraced in this deed of trust and mortgage; and whereas the board of directors of the Sioux City & St. Paul Railroad Company, for the purpose of providing money to construct said railroad from Saint James to Sioux City aforesaid, determined by resolution to issue bonds to the amount of two millions eight hundred thousand dollars, to bear semi-annual interest of four per cent., but principal and interest to be payable only from the proceeds of sales of lands so mortgaged, and when all the proceeds of said lands are exhausted the unpaid portion of said bonds or coupons to be utterly void, said bond to be in form substantially as follows:

No. —. *Land-Grant Mortgage Bond.* $500.

UNITED STATES OF AMERICA, *States of Iowa & Minnesota.*

The Sioux City & St. Paul Railroad Company.

The holder hereof is entitled to receive the sum of five hundred dollars in lawful money of the United States, with interest thereon free of United States income tax, at the rate of eight per cent. per annum, after the first day of January, one thousand eight hundred and seventy-two, payable on the presentation of the proper interest coupons, in their numerical order according to the provisions of a deed of trust of certain lands made to Alexander H. Rice and Elias F. Drake, of the date hereof. This bond with others of like tenor and date amounting in all to two millions eight hundred thousand dollars, is based upon said mortgage lands, being about five hundred and fifty thousand acres which the Sioux City and St. Paul Railroad Company promises to sell and distribute the proceeds according to the

terms of said trust deed equally to the holders of all said bonds,
70 and it is distinctly understood and agreed that said company shall not be held liable upon this bond for any amount above the net proceeds delivered from said lands, and when all of said lands shall be disposed of and all moneys arising therefrom distributed to the holders of said bonds this instrument shall be void. This bond (with all unpaid coupons attached) will be received at par for the face thereof in payment for any of said mortgaged lands at their current appraised sale value, and this bond shall pass by delivery or by transfer on the books of the company after the registration of ownership certified hereon by the transfer agent of the company. No transfer on the books of the company shall be void unless the last transfer be to bearer.

In testimony whereof the said Sioux City & Saint Paul Railroad Company has caused this bond to be signed by its president and secretary, and its corporate seal to be hereto affixed at Sioux City, Iowa, the first day of August in the year one thousand eight hundred and seventy-one.

This bond will be of no validity unless certified by the trustees named therein.

(Signed) E. F. DRAKE, *President.*
[STAMP.] G. A. HAMILTON, *Secretary.*

We certify that this bond is one of a series described and secures as herein stated.

E. F. DRAKE,
ALEX. H. RICE, *Trustees.*

Now, for the purpose of securing and providing for the payment of the principle and interest of the said two million eight hundred thousand dollars of bonds to be so issued, the Sioux City &
71 Saint Paul Railroad Company, party of the first part, in consideration of the premises and of one dollar to it in hand paid by Alexander H. Rice, of Boston, Massachusetts, and Elias F. Drake, of Saint Paul, Minnesota, parties of the second part, trustees for all the holders of said bonds, hereby grants, bargains, sells, and conveys to said Alexander H. Rice and Elias F. Drake, parties of the second part, and to their successors and assigns forever, all and singular the following-described lands lying and being in the State of Iowa, reserving and excepting therefrom, however, for purposes of a right of way for its railroad, fifty feet in width on each side of the center of its track as now built through said lands, and where said road passes through excavations requiring fences for protection against snow reserving and excepting a distance not exceeding one hundred feet on each side of the center of the said track; also reserving and excepting not exceeding ten acres at any station, to be set off and to be known as depot grounds; reserving also the right to open and maintain, when required, ditches for drainage over any of said lands, more particularly describing the lands herein conveyed with the exceptions and reservations before stated:

All the lands granted by Congress by said act approved May 12,

1864, lying and being in the State of Iowa, that may hereafter be patented or otherwise transferred by the United States or the State of Iowa to the party of the first part or to which said first party may acquire title by reason of said grant, supposed to be no less than three hundred and twenty-five thousand acres, within the State of Iowa; also all and singular the lands granted by the said act of Congress approved March 3, 1857, which were transferred or intended to be transferred by the first party by a certain agreement executed and made by the said Saint Paul and Sioux City Railroad Company and the first party, dated March 3, 1871, being so
72 many of the *the* lands granted by the State of Minnesota by said last-named act as shall be found lying within the orig-nal six-mile limits of the said grant from a point twenty miles west from the west side of range number thirty-one, being all the lands of said grant of March 3d, 1857, in place westerly from said beginning point, to be taken according to the mode of adjusting adopted by the State, commencing at the west end of the block of advance sections retained by the Saint Paul & Sioux City Railroad Company, which advance sections lie and extend twenty miles immediately west of said range number thirty-one and have been conveyed to said last-named company for road by it heretofore constructed, the quantity hereby conveyed being estimated at not less than two hundred and thirty thousand acres, reserving to the first party and excepting from this conveyance lot number five and the southeast quarter of the southeast quarter of section fifteen, township one hundred and four, range thirty-nine, containing eighty-one and fifteen-hundredths ($\frac{15}{100}$) acres; excepting also the right-of-way lands for stations, for fencing against snow, and for ditches to the same extent, when required, as provided hereinbefore, through and over lands describ-d as in the State of Iowa, the whole quantity of lands herein conveyed being estimated at not less that five hundred and fifty-five thousand acres in both States, but to include all the lands that may become the property of said first party under and by virtue of said grants of Congress, subject to the exceptions before named, and subject also to the conditions, restrictions, provisions, and limitattion- provided here-before and following.

73 Article 1. That whenever the holders of a majority of said bonds shall so determine they may call a meeting of all the said bondholders at the city of New York, at a time and place of which at least sixty days' previous notice stating the object of the meeting shall be given by publication in one or more daily newspapers of general circulation in said city; and at such meeting, if the holders of two-thrids in amount of the bonds outstanding concur, they may organize by choosing a temporary or permanent chairman and secretary and may resolve to take the control, management, and sale of all the lands embraced herein then undisposed of and may appoint managers or agents to represent them who may determine the price at which any of such lands may be sold, the time, manner, and terms of sale and payments therefor, and do all things relating to the control, management, and sale of said lands that the party of the first part could lawfully do had such meetings

and organization of bondholders not taken place or managers or agents been appointed.

Article 2. At any meeting provided for as in article first bondholders may for each bond cast one vote in person or by proxy, but all persons claiming to vote as holders of bond- shall at the time and place of voting furnish evidence of ownership or control of bonds by exhibiting in his possession the bonds on which he claims to vote or shall file an affidavit of such ownership or possession of said bonds, describing the same particularly by date and number, and the officer before whom such affidavit is made shall certify that said bond- were in the possession of the said party at the date thereof; but registry of bonds shall be sufficient evidence of ownership.

Article 3. That until some default in the conditions here-
74 *hereof* is made by the parties of the first part or until the bondholders, as provided in the preceeding article, shall take the control, sale, and management of said lands the party of the first part shall hold, control, manage, bargain and sell any and all of said lands, prescribe the prices for which they shall be sold and the terms of sales and credits, subject, however, to the approval of the said party of the second part or their successors in this trust.

Article 4. Before any contract of sale or deed or other instrument of writing encumbering or conveying title of said lands or any of them shall be valid or binding against the party of the second part every such contract, deed, or conveyance made by first party shall be countersigned by said party of the second part as trustees or by their duly authorized attorney, acting as such for one or both of them, as the case may be.

Article 5. Whenever any contract or deed of sale shall be approved or countersigned by said trustees the money paid by the purchaser of such lands on account of such contract or deed or other money received on account of such lands shall be deposited with such party or such trust company, savings or other bank as the said trustee shall deem safe and most for the interest of said trust. Any and all contrac-s, notes, or securities taken by the first party for deferred or other payments on such lands so contracted, sold, or deeded shall, when demanded of the first party, be assigned, transferred, and delivered to said second party, who shall be authorized to hold and control the same and to deposit and dispose of the collections therefrom in the manner provided herein for other funds received by them.

75 Article 6. From the funds received from the sale or use of the lands and the proceeds and increase thereof the said trustees are authorized, first, to pay all necessary expenses incurred in obtaining patents and title to said lands; second, to pay all public charges and taxes; third, to pay all reasonable expenses incurred by them in the management of this trust or which they may find necessary for the interest of the holders of said bonds. An exhibit in detail of such expenditures shall, as often as once a year or oftener if required by the first party, be made by said trustees to the party of the first part, and if the holders of said bonds, under the

provisions hereof, shall have taken con-roll of the sale of said lands, then a like exhibit of such expenditures shall be made to the proper representative of such bondholders, but no payment or allowance for personal services of said trustees shall be made unless first authorized by the first party or by the representatives of the bondholders or a proper court of law or chancery, whichever for the time being shall have control of said lands and the management thereof or the funds arising therefrom.

Article 7. Whenever the said trustees shall have in their control funds arising from the sale of lands sufficient to pay at least four per cent. interest on all of said bonds then outstanding they shall give public notice in one or more newspapers of general circulation in the city of New York of the time and place when they will redeem one or more of the coupons attached to said bonds in their regular order, and the funds for such payments shall be set apart and held specifically for each bondholder until called for by presentation of the proper coupons.

76 Article 8. If it shall so happen at the time set apart for payment of any coupons as provided in article seven there shall be in the hands of the said second party sufficient funds to provide for all unpaid coupons then payable by the terms of the bond to which the same is attached, allowing one coupon as payable at the end of each six months from Jan. first, 1872, and in addition thereto the sum of five thousand dollars or more, such *express* shall be applied to the redemption and extinguishment of outstanding bonds in the manner provided in article ninth following.

Article 9. Whenever the second party shall determine to extinguish bonds as provided in the last article they shall give public notice in one or more commercial newspapers of the city of New York of the time and place where proposals will be received for the redemption of such number of bonds as may be surrendered to them for the amount of money held by them applicable for that purpose, the first publication of such notice to be at least sixty days before the time named for opening such proposals and such notice to be published at least five times during each period of thirty days precee-ing the time named. At the time and place named the second party shall, in the presence of such of the bondholders as may choose to be present, open the tenders or bids and accept to the amount required the bonds offered for the lowest sum, or, if bids from two or more parties are alike, cast lots to determine the bonds to be redeemed. Bids shall name the sum or per cent. that will be accepted for the face of the bond, which shall include, without taking the same into account, all unpaid coupons and interest due to date.

77 Article 10. The bonds so redeemed, with all coupons, shall be immediately cancelled in the presence of the register of bonds for the time being and entries of the redemption and cancellation made upon the register book, and a list of said bonds so cancelled shall be furnished by the second party to the first party.

Artice 11. As soon as the party of the first part shall be entitled

to deeds or patents or other evidence of title from the United States or the State of Minnesota or Iowa and any land shall be deeded or patented a complete descriptive list shall be made and delivered to the party of the second part and so from time to time until complete lists shall be furnished of all the lands included in the deed of trust.

Article 12. As soon as practicable the party of the first part shall fix a value on each suitable subdivision of la-d in convenient and appropriate tracts, for which the same shall be sold on such payments and such credits as may be most for the interest of the holders of said bonds, which appraised value and terms of credit may be changed from time to time, but *but* the appraisals and terms of sale shall not be binding unless approved by the second party or by the agents or managers who may be appointed by the bondholders as herein provided.

Article 13. For the purpose of enabling the holders of bonds to convert the same into lands, as provided on the face of said bonds, the first party, with the concurrence of the second party, shall make appraisals of said land when title to the same may be acquired, subject to revision from time to time, and such appraisals
78 shall be known as and be the "current appraised value" of said lands as named in said bonds. Until the true quantity of l-nds embraced herein is ascertained such appraisal shall be based on a quantity of five hundred and fifty-five thousand acres; that will redeem all of said bonds at the face the-eof, at par, and pay all probable expenses and proeper charges, and including also an excess of ten per cent. for contingencies, so that there may always remain lands *pro rata* to satisfy and redeem all bonds on terms equally favorable with those that may have been at any previous time surrendered for lands.

Article 14. Bonds shall be received in payment for lands at the "current appraised value," rating such bonds at their face, excluding any allowance for interest accrued thereon, but all unpaid coupons belonging to such bonds shall be surrendered with said bonds, but the right to use bonds in payment for lands shall only attach to such of the land as may at the time be "free lands," which term includes all lands included herein not at the time sold, bargained, or set apart or used for a town*sight*, depots, or other particular purpose, or contracted to be sold through any particular agency or in any particular manner, but embracing in the term "free land" all lands or lots forming parts of said originally granted lands by the first party for general sale at its office.

Article 15. When bonds shall be surrendered in payment for lands they shall be immediately cancelled, with all coupons attached, and reported to the register and to the first party in the manner provided in article tenth hereof.

79 Article 16. The word trustee when used herein is declared to mean the trustees for the time being, whether those named herein or their successors, and in case any vacancy shall arise from any cause the party of the first part may appoint a successor; but if the holders of said bonds shall have organized and taken con-

trol as provided hereinbefore, then the vacancy shall be filled by the representatives of the bondholders as so organized, and such representatives after such organization may remove any trustee and appoint a successor. The trustees may appoint one or more persons or corporation to act as their attorney-in-fact, for the pur-ose of more conveniently performing their duties, or either of said trustees may substitute and appoint an attorney-in-fact to represent him in his said duties, and the acts of said trustee or trustees by the properly constituted attorney shall be valid in law and elsewhere. Neither of the trustees shall be liable for the acts or malfeasance of the other or the acts of any other agent or person employed by them in good faith in the course of their duties, and any trustee may resign at pleasure, but he shall on proper request execute such papers, if any be necessary, as may be required to invest his successor with full control of the property, moneys, and assets pertaining to the trust.

Article 17. The first and the second party hereto, with the concurrence in writing of three-fourths in amount of the holders of all outstanding bonds, acting by such agent as they may name in writing, may modify and change the provisions hereof in any manner deemed for the equal interest of all holders of bonds, and after a period of ten years from the first day of January, 1872, they may take such measures by sale of the remaining bonds or otherwise, as they may think best, to close the trust and pay all the remaining bonds or distribute *pro rata* among the holders thereof the property or assets remaining or such other method as they may agree upon, which shall be just to all parties, to close said trust, and when all of said bonds are redeemed as provided herein or, if not all redeemed, when all the lands or proceeds thereof shall be distributed to the bondholders, then the said bonds and the interest coupons or claims attached or thereunto belonging shall be wholly void.

Article 18. If the party of the first part shall at any time fail to well and truly perform all the agreements and undertakings which it had herein covenanted to perform and well and truly act so as to carry into effect the true meaning and intent of this instrument the party of the first part may apply to any competent court of law or equity to enforce the provisions hereof, hereby agreeing that such court shall have full power and authority to make all orders and judgments necessary to enforce and protect the rights of the parties hereto.

Article 19. Whenever the bonds issued under the provisions of this instrument shall al- be paid, with the interest thereon and the proper expenses of the trust, or whenever there shall be in the hands of the second party cash or obligations arising from the sale of said lands sufficient to pay said bonds and the interest thereon and proper expenses of the trust, then this instrument as to all the remaining unsold lands shall be void and the remaining lands and the excess of money or obligations after discharging the liens created by this trust shall revert and belong to the party of the first part; to have and to hold the said described lands, with all the privileges
80 and appurtenances thereto appertaining, to the said Alex-

ander H. Rice and Elais F. Drake and their successors and assigns forever for the purposes, uses, trusts, and subject to the conditions herein provided.

In testimony whereof the party of the first part, by its president and secretary, have hereunto affixed the seal of said Sioux City & Saint Paul Railroad Company and, by order of its board of directors, executed this instrument as the act and deed of the Sioux City and Saint Paul Railroad Company the day and year first above written.

[SEAL.] THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY,
By E. F. DRAKE, *President.*
GEORGE A. HAMILTON,
Assistant Secretary.
ALEXANDER H. RICE,
E. F. DRAKE, *Trustees.*

In presence of witnesses to signatures—
EDW'D SAWYER.
EDWARD BENEAU.
ALEX. H. RICE.
CHAS. S. KENDALL, JR.
GEO. H. MACKAY.

EXHIBIT "G" OF DEF'TS' ANS.

Whereas the Sioux City and Saint Paul Railroad Company, a corporation *authorized* and formed under and by the laws of the State of Iowa, is entitled to the benefits of a certain grant of land to aid in building its said road from Sioux City to the north line of the State of Iowa, as provided by the act of Congress approved May 12th, 1864, which grant of lands to the State of Iowa in trust was accepted by said State, and all the lands, rights, powers, and privileges conferred on the State in and by said act were granted to and conferred upon the Sioux City and Saint Paul Railroad Company by the General Assembly of the State of Iowa by an act approved April 3, 1866, and the benefits of said last-named act were duly accepted by said Sioux City and St. Paul Railroad Company, and said company, prior to the fourth day of October, 1866, completed the definite location of its road from Sioux City to the north line of the State of Iowa, and duly filed a map of said location with the governor of said State and in the General Land Office of the United States, which said map so filed was approved and duly recognized as a legal map of the definite location of said road, and the odd sections of lands belonging to the United States within twenty (20) miles on each side of said location were set apart and selected by the Secretary of the Interior as inuring to said grant for said road; and

Whereas prior to July 15, 1872, said railroad company had constructed and completed, as required by law, its said railroad from Sioux City to the north line of said State of Iowa, a distance of eighty and six-tenths miles (with the exception of twenty-four miles

between the village of Le Mars and said Sioux City), making fifty-six and six-tenths miles of completed road, and such completion was duly certified to the governor of the State and to the Secretary of the Interior of the United States, and after filing such certificate of completion the Secretary of the Interior caused to be pat-
81 ented to the State of Iowa for the use and benefit of the Sioux City and St. Paul Railroad Company all of the lands inuring to said grant, and after the issuing of said patents the General Assembly of the State of Iowa, by an act approved April 13, 1874, authorized and directed the governor of the State to certify to the Sioux City and St. Paul Railroad Company any and all lands held by the State for the benefit of said company, thereby vesting in said company a legal and equitable title in said lands; and

Whereas in order to raise money to construct said road said company did, by mortgage or deed of trust made on the first day of August, 1871, convey to Elias F. Drake and Alexander H. Rice, as trustees, and their successors in said trust to secure, pay, and retire certain bonds of the denomination of five hundred dollars; and

Whereas said bonds were sold and paid for in money which was used to construct said road (a large amount of said bonds, with interest accrued thereon, being still outstanding and unpaid and said trust remaining in full force); and

Whereas Elais F. Drake and Ahmerst H. Wilder, at present the trustees for said trust, pursuant to the provisions of the eleventh article of said trust deed, dated August first, A. D. 1871, have requested and required the Sioux City and Saint Paul Railroad Company to file a descriptive list of lands, particularly of such lands as have been patented to the State of Iowa for the use of said railroad company, and also to execute an instrument by way of further assurance and confirmation of said deed of trust August 1, 1871, embracing and describing the specific lands conveyed and intended to be conveyed in and by said original trust deed as therein and thereby contemplated and provided; and

Whereas the board of directors of said Sioux City and St. Paul Railroad Company has duly adopted a resolution to comply with said demand of said trustees and authorizing said company, by its proper officers, to execute said instrument:

Now, therefore, know all men by these presents that in consideration of the payment in hand to the Sioux City and St. Paul Railroad Company of one dollar by Elias F. Drake and Amherst H. Wilder, trustees, acting by authority of said deed of August first aforesaid and in pursuance of said resolution of the board of directors, *of* the Sioux City and St. Paul Railroad Company, party of the first part, hereby grants, sells, conveys, and confirms to Elias F. Drake and Amherst H. Wilder, as trustees aforesaid, and their successors in said trust all and singular the lands heretofore patented to the State of Iowa under the act of Congress of May 12, 1864, for the use and benefit of the Sioux City and St. Paul Railroad Company, and particularly all that portion of said lands embraced in the following-descriptive list, to wit: Land lying and being in the county of O'Brien, in said State of Iowa, being—

(Here follows list specifically describing sections and parts of sections of all the lands included within the grant lying in O'Brien county, among which are the lands in controversy in this action.)

To have and to hold the said lands and every part thereof to the said Elias F. Drake and Amherst H. Wilder, in trust, nevertheless, subject to all the conditions, benefits, and provisions of said deed of trust or mortgage, hereinbefore referred to, executed by said railroad company to said Elias F. Drake and Alexander H. Rice, trustees, dated the first day of August, A. D. 1871, and duly recorded in the several counties where said lands — situate,
82 hereby ratifying, confirming, approving, continuing, and making in full force all and singular the provisions of said deed of trust of August 1, A. D. 1871, to Elias F. Drake and Amherst H. Wilder, trustees aforesaid, for the benefit and security of the holders of bonds outstanding issued under said deed, subject to all the provisions thereof, reference being had to said deed for particulars of the provisions, grants, and powers therein and hereby granted and confirmed in each and every part thereof.

In testimony whereof the said Sioux City and St. Paul Railroad Company has hereto affixed its corporate seal and caused these presents to be signed by its president and attested by its secretary this twenty-fifth day of February, A. D. 1884.

ELIAS F. DRAKE,
President Sioux City and St. Paul R. R. Company.

Signed, sealed, & delivered in presence of—
J. E. MOORE.
W. F. VON DEYN.

Attest:
[SEAL.] GEO. A. HAMILTON,
Secretary Sioux City and St. Paul Railroad Company.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it remembered that on this twenty-fifth day of February, A. D. 1884, before me, the undersigned, a notary public in and for said county, personally came Elias F. Drake, to me personally known to be the president of the Sioux City and St. Paul Railroad Company, the grantor herein named, and acknowledged said instrument to be the act and deed of the said company, by the several officers whose names are subscribed to said instrument, thereunto appointed, voluntarily done and executed.

In testimony whereof I have hereunto affixed my hand and notarial seal, at St. Paul, Minnesota, the day and year last above written.

[SEAL.] O. D. WHEELER,
Notary Public, Ramsey Co. Minn.

(Endorsed:) Circuit court of U. S., northern district of Iowa, western division. 104. Equity. United States of America vs. S. C. and

St. P. R. R. Co.; E. F. Drake, A. Wilder, trustees. Original. Filed Dec. 2, 1889. A. J. Van Duzee, clerk, by J. H. Bolton, deputy. Answer of E. F. Drake and A. H. Wilder, trustees.

83 And afterwards, to wit, on the 1st day of February, A. D. 1890, there was filed in the office of the clerk of said court a stipulation in said cause; which stipulation is in words and figures following, to wit:

In the United States Court for the Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY & ST. PAUL RAILROAD COMPANY *et al.*, Defendants. } Stipulation.

It is hereby stipulated by and between the parties hereto that complainant shall have until the first Monday in March in which to file exceptions or replications to the several answers of defendants herein, such pleadings to be deemed filed *nunc pro tunc* as of the first rule day after answers filed.

E. C. HUGHES,
Attorney for Complainant.
J. H. & C. M. SWAN,
Attorneys for Defendants.

(Endorsed:) No. 104. Equity. Stipulation. Filed Feb. 1st, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

And afterwards, to wit, on the 3rd day of March, A. D. 1890, there was filed in the office of the clerk of said court the reply of the plaintiff to the answer of defendant The Sioux City & St. Paul Railroad Company and the reply of the plaintiff to the answer of Elias F. Drake and Amherst H. Wilder, trustees; which replies are in the words and figures following, to wit:

84 In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY; ELIAS F. DRAKE and AMHERST H. WILDER, Trustees, Defendants.

Reply of The United States of America to the Answer of Elias F. Drake and Amherst H. Wilder, Trustees.

This complainant, now and at all times hereafter saving and reservong unto itself all benefits and advantages of any and all exceptions which can or may be had to the many errors, uncertainties, and imperfections in the answer of the said defendants, Elias F. Drake and Amherst H. Wilder, trustees, heretofore filed in this cause,

and for reply thereto or unto so much or such parts thereof as are material or necessary for it to make reply unto, says—

That, saving and excepting such parts of said answer as admit any of the allegations of its bill of complaint herein, it denies each and every allegation in said answer contained not herein admitted or otherwise pleaded to, and avers that the same are not true to the knowledge or belief of this complainant.

That it admits that on the first day of August, 1871, there was executed to Elias F. Drake and Alex. H. Rice a certain trust deed, covering and describing the lands in controversy and other lands, a copy of which deed is to said answer annexed as Exhibit "X" and made a part thereof, and that afterwards the said Alex. H. Rice resigned as said trustee and the defendant Amherst H. Wilder was duly appointed and substituted as such trustee, but complainant avers that the said trust deed was and is illegal and void and was so executed contrary to law and in contravention of the express terms and provisions of the said act of Congress approved May 12, 1864, a copy of which is attached to complainant's original bill herein and to which reference is made; that if the pretended confirmatory deed, a copy of which purports to be annexed to said answer as Exhibit "G," was in fact executed by the said Sioux City and St. Paul Railroad Company, the same was and is likewise illegal and void, so far as relates to the lands in controversy, and was so made and executed contrary to law and in violation of the express terms and provisions of the aforesaid act of Congress approved May 12th, 1864, and the said confirmatory deed was executed wholly without consideration.

Wherefore complainant prays as in its original complaint herein.

W. H. H. MILLER,
Attorney General.
E. C. HUGHES, *Of Counsel.*

(Endorsed:) The United States of America, complainants, *vs.* The Sioux City and St. Paul R. R. Company, defendants. Reply. Filed March 3rd, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

85 In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, and AMHERST H. WILDER, Defendant-.

Reply of The United States of America to the Answer of Defendant The Sioux City & St. Paul Railroad Company.

And now comes this complainant, and now and hereafter, at all times, saving and reserving unto itself all benefits and advantage of any and all exceptions which can or may be had or taken to the many errors, uncertainties, and imperfections in the answer of the

aid defendant, The Sioux City & St. Paul R. R. Company, heretofore filed in this cause, *and* for reply thereto or unto so much or such parts thereof as are material or necessary for it to make reply unto says—

That, saving and excepting such parts of said answer as admit of any of the allegations of its bill of complaint herein, it denies each and every allegation in said answer contained, and avers that the same are not true to the knowledge or belief of this complainant. Wherefore the complainant prays as in its original complaint herein.

W. H. H. MILLER,
Attorney General.

E. C. HUGHES, *Of Counsel.*

(Endorsed:) 104. Equity. The United States of America, pe'ff, *vs.* The Sioux City and St. Paul Railroad Company *et al.*, def'ts. Reply to answer of Sioux City & St. Paul R'y Co. Filed March 3rd, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

86 And afterwards, to wit, on the 12th day of June, A. D. 1890, the-e was filed in the office of the clerk of said court a stipulation; which stipulation is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
SIOUX CITY & ST. PAUL RAILROAD COMPANY; ELIAS F. DRAKE and AMHERST H. WILDER, Trustees, Defendants.

For the purpose of the trial of this cause it is hereby stipulated and agrees that the following statements of fact, together with the exhibits hereto attached and herein referred to, shall be received and considered as the evidence in the cause with the same force and effect as if taken in the usual manner, but subject to the objections herein stated to each paragraph hereof; nothing, however, in the objection herein set forth shall be considered as raising the question that the said statements of fact or the said exhibits attached or referred to are not the best evidence or incompetent by reason of not being the best evidence.

W. H. H. MILLER,
Attorney General.
E. C. HUGHES,
Special Counsel for U. S.
J. H. & C. M. SWAN,
Solicitors for Def'ts.

Par. 1. That the Congress of the United States, on May 12, 1864, passed an act entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in

said State," approved May 12, 1864, a copy of which is correctly set forth in Exhibit No. 1 of the complainant's bill, and the said act is found on page 72 of volume 13 of United States Statutes at Large; to which reference is to be made.

Par. 2. That on the third day of April, 1866, the legislature of the State of Iowa passed an act entitled "An act to accept of the grant and carry into effect the trust conferred upon the State of Iowa by an act of Congress entitled An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved April 3, 1866, and which act is correctly set forth in Exhibit No. 2 of the complainant's bill and is found on page 144 of the Laws of the General Assembly of the State of Iowa for 1866, being chapter 134 thereof.

Par. 3. That the legislature of the State of Iowa, on April 20, 1866, passed an act entitled "An act to accept the grant of land to the State of Iowa made by an act of Congress May 12th, 1864, and to carry out the provisions of said act entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,'" which act was approved
87 April 20, 1866, a copy of which is correctly shown in Exhibit No. 3 of complainant's bill and is found in the Laws of the General Assembly of the State of Iowa for the year 1866, on page 189, being chapter 144 thereof.

Par. 4. That on the 25th day of March, 1868, the legislature of the State of Iowa passed an act correcting a clerical error in the act described in Exhibit No. 3 aforesaid, which act was approved March 24, 1868, and is correctly shown in Exhibit No. 4 of the complainant's bill, being chapter 42 of the Laws of the General Assembly of the State of Iowa for the Year 1868.

Par. 5. That on the 19th day of Sept., 1866, the defendant The Sioux City and St. Paul Railroad Company filed in the office of the secretary of the State of Iowa its written acceptance of the said grant of Congress and of the several acts of the legislature of the State of Iowa upon the terms, conditions, restrictions, and limitations therein contained, a copy of which written acceptance is set forth in Exhibit No. 5 of the complainant's bill, to which reference is here made.

Par. 6. That on the 27th day of Sept., 1866, the Sioux City and St. Paul Railroad Company commenced the location of its line of railroad in Sioux City, in the State of Iowa, and between that time and the 4th day of October of said year it located and established its line of road by locating and surveying the same upon the face of the earth from Sioux City to the south line of the State of Minnesota, in range forty-one (41) west of the 5th P. M., which line is correctly shown upon Exhibit No. 6 to the complainant's bill attached.

Par. 7. That on the 2d day of April, 1867, the said Sioux City and St. Paul Railroad Company, under the seal of the said company, by its president and secretary, certified to the said map and filed the same in the office of the secretary of *the* state of the State of Iowa and on the 10th day of July, 1867, W. M. Stone, governor of the

State of Iowa, and Ed. Wright, secretary of state, certified to said map, and on the 17th day of July, 1867, the said map, together with the said certificates, was caused to be filed in the office of the Secretary of the Interior of the United States, which certificates are attached to Exhibit No. 6.

Par. 8. That on the 16th day of July, 1867, O. H. Browning, Secretary of the Interior, by letter of that date to the Hon. Jos. S. Wilson, Commissioner of the General Land Office, transmitted the said map to the Commissioner of the General Land Office, a copy of which letter is hereto attached and marked Exhibit No. 7.

To the facts stated in par. 8 and the exhibits thereto attached the plaintiff objects as immaterial and irrelevant.

Par. 9. That on the 26th day of August, 1867, Jos. S. Wilson, the Commissioner of the General Land Office of the United States, transmitted to the register and receiver at Sioux City, Iowa, a map showing the original location of the said line of road, together with the ten and twenty mile limits, and said map was accompanied by a letter from the said Land Commissioner to the said register and receiver at Sioux City withdrawing the lands within the ten and twenty mile limits from sale and increasing the price of even-numbered sections to $2.50 per acre, a copy of which letter and map are hereto attached and marked Exhibit 8, except that the ir-
88 regular black line drawn across the place limits has been since drawn thereon to denote the southern terminal for the fifty miles constructed.

Par. 10. That the State of Iowa has never selected a point on the south line of the State of Minnesota between the Big Sioux river and the west fork of the Des Moines river as a terminal point of the said line of railroad from Sioux City, Iowa, to the south line of said State, but the defendant The Sioux City and St. Paul Railroad Company made selection of said point pursuant to the authority conferred upon it by sec. 6 of chapter 134 of the Laws of the General Assembly of the State of Iowa for the Year 1866.

Par. 11. That in the year 1872 the said Sioux City and St. Paul Railroad Company commenced the construction of a railroad on the south line of the State of Minnesota, in range forty-one west of the 5th P. M., and constructed the same in a southerly direction to the town of Le Mars, in the county of Plymouth and State of Iowa, on or before the 25th day of Sept., 1872, which more fully appears from the map of construction filed by the said company in the office of the secretary of the State on the 4th day of Feb., 1873, and which map, together with certificates of J. W. Bishop, chief engineer of said company; E. F. Drake, president of said company, and C. C. Carpenter, governor of the State of Iowa, and Josiah T. Young, secretary of state, duly endorsed thereon, was filed in the office of the Commissioner of the General Land Office of the United States on the 10th day of February, 1873, a copy of which map, together with the aforesaid certificates duly endorsed thereon, is hereto attached as Exhibit No. 9.

Par. 12. That C. C. Carpenter, governor of the State of Iowa, did, on the 26th day of July, 1872, and on the 10th day of Aug., 1872,

and on the 4th day of Feb'y, 1873, make and file with the Secretary of the Interior certificates showing the construction of five sections of ten consecutive miles *of* each of said railroad, copies of which certificates are hereto attached as Exhibit No. 10 hereof.

Par. 13. That on the 16th day of October, 1872, the United States issued a patent for 191,464.04 acres, a copy of which patent is hereto attached, marked Exhibit No. 11.

Par. 14. That on the 17th day of June, 1873, the United States issued a patent for 205,374.76 acres, a copy of which patent is hereto attached, marked Exhibit No. 12.

Par. 15. That on the 25th day of January, 1875, the United States issued a patent for 10,111.41 acres, a copy of which patent is hereto attached, marked Exhibit No. 13.

Par. 16. That on the 4th day of June, 1877, the United States issued a patent for 160 acres, a copy of which patent is hereto attached, marked Exhibit No. 14.

Par. 17. That the General Assembly of the State of Iowa passed an act entitled "An act authorizing and directing the governor to certify to the Sioux City and St. Paul Railroad Company certain lands named therein," which act was approved March 13, 1874, being chapter 34 of the Private, Local, and Temporary Laws
89 of the General Assembly of the State of Iowa for the Year 1874, a copy of which act is hereto attached as Exhibit No. 15.

Par. 18. That on the 30th day of November, 1878, the Chicago, Milwaukee and St. Paul Railway Company, which by certain acts of the legislature of the State of Iowa had become the successor of the said McGregor Western Railway Company, completed the construction of its road to a point of intersection with the aforesaid line of location and construction of the said Sioux City and St. Paul Railroad Company in section thirty-one (31), in township ninety-seven (97), range forty-two (42) west of the 5th P. M., within the county of O'Brien, in said State, at or near the town of Sheldon, Iowa.

Par 19. That on the 7th day of April, 1879, the Chicago, Milwaukee and St. Paul Railway Company commenced in the circuit court of the United States for the district of Iowa an action against the Sioux City and St. Paul Railroad Company; E. F. Drake and Alexander H. Rice, trustees, and against John H. Gear, governor of the State of Iowa, and J. K. Powers, register of the State land office of the State of Iowa, and filed their bill of complaint therein, a copy of which is hereto attached as Exhibit N-. 16.

To the facts stated in par. 19 and the exhibit therein referred to the plaintiff objects as irrelevant and immateri-l.

Par. 20. To this bill of complaint the Sioux Cit- and St. Paul Railroad Company; Alexander H. Rice and Elias F. Drake, trustees, filed on the 30th day of May, 1879, their joint answer to the said bill of complaint, hereto attached as Exhibit No. 17.

To the facts stated in par. 20 hereof and the exhibit therein referred to the plaintiff objects as irrelevant and immaterial.

Par. 21. That to the said bill of complaint John H. Gear, governor

of the State of Iowa, and J. K. Powers, register of the State land office, by J. F. McJunkin, attorney general of the State of Iowa, filed their answer to said bill, a copy of which is attached as Exhibit No. 18.

To the facts stated in par. 21 and the exhibit therein referred to the plaintiff objects as irrelevant and immaterial.

Par. 22. That thereafter such proceedings were had in said cause in the said circuit court of the United States in the district of Iowa and in the Supreme Court of the United States as that on the 21st day of May, 1886, there was entered and recorded in the said circuit court, in pursuance of the mandate of the Supreme Court of the United States, a decree of the said court, a copy of which is hereto annexed, marked Exhibit No. 19; and in pursuance of said decree further proceedings were had in partition of said lands, and further decree was made and entered in said report making partition of said lands, a copy of which is hereto annexed and marked Exhibit No. 20.

To the facts stated in par. 22 and the exhibits therein referred to the plaintiff objects as irrelevant and immaterial.

Par. 23. That on the 15th day of Jan., 1887, an application was addressed to the Secretary of the Interior on behalf of certain settlers in O'Brien county, Iowa, on the lands in controversy and the other lands referred to in said decree in partition as not patented by the State, requesting that the Attorney General of the United States be asked to commence and prosecute a suit in the name of the United States to assert its title to said lands; that upon
90 the hearing and application arguments were made before the Secretary of the Interior by counsel representing said applicants, and also by counsel representing the Sioux City and St. Paul Railroad Company and the Chicago, Milwaukee and St. Paul Railway Company respectively; that in the matter of said application, upon due hearing thereof, the said Secretary of the Interior did, on the 26th day of July, 1887, render his decision in writing, which was addressed to the Commissioner of the General Land Office, a copy of which is hereto attached, marked Exhibit No. 21, and made a part hereof.

To par. 23 and the exhibits therein referred to all of the defendants object as being immaterial and irrelevant.

Par. 24. That on the 27th day of Sept., 1886, and on the 30th day of November, 1886, the State of Iowa patented to the Chicago, Milwaukee and St. Paul Railway Company the lands set forth and described in the above-mentioned decree in partition as the lands enuring to the said Chicago, Milwaukee and St. Paul Railway Company under the said decree of said court which had not been theretofore patented or certified by said State.

Par. 25. That the list of lands specifically set forth in par. 21 of the bill of complaint herein is a true and correct list of all the lands situated in the counties of Dickinson and O'Brien, in said State of Iowa, described in the aforesaid patents from the United States to the State of Iowa and embraced within the description of land contained in the aforesaid decree of the United States circuit court and the said proceedings in partition thereunder which have

not been certified, patented, or otherwise disposed of by the State of Iowa.

Par. 26. That the Congress of the United States, by an act approved May 15th, 1856, made a grant of land to the State of Iowa to aid in the construction of a railroad from the city of Dubuque, Iowa, to a point on the Missouri reiver at or near Sioux City, Iowa, which act is found on page 9, volume 11, of the United States Statutes at Large, and that afterwards, by an act of the legislature or the State of Iowa, approved July 14th, 1856, said grant was accepted by the State of Iowa and the lands thereby granted were disposed of, granted, and conferred to and upon the Dubuque and Pacific Railroad Company, which located the line or route of its road and filed its map of definite location with the secretary of state of the State of Iowa and the Secretary of the Interior, and thereafter and at or prior to the year 1870 the Iowa Falls and Sioux City Railroad Company, successor to the Dubuque and Pacific Railroad Company, completed the construction of said road to the town of Le Mars, county of Plymouth and State of Iowa and thence down the valley of the Floyd to Sioux City, Iowa. The said line of location and said line of construction of the said Dubuque and Pacific Railroad Company and its successors, together with the "place" and "indemnity" limits of the said grant of May 15th, 1856, correctly appear on Exhibit "A" of defendants' answer.

Par. 27. That the defendant The Sioux City and St. Paul Railroad Company has constructed a line of road from the south line of the State of Minnesota to the town of Le Mars, in Iowa, a distance of fifty-six and $\frac{13}{100}$ miles, and one and $\frac{1}{10}$ miles in the city of Sioux City, Iowa, which is all the road the said Sioux City and St. Paul
-ailroad Company has ever constructed in the said State of
91 Iowa; that from Le Mars to Sioux City, a distance of twenty-five miles, the said road has never been constructed; that the map of construction, Exhibit No. —, correctly shows the line so constructed.

Par. 28. That the State of Iowa has never caused said railroad to be completed and has never patented or certified to the defendant The Sioux City and St. Paul Railroad Company or to any other corporation or person the lands described in par. 21 of plaintiff's bill for the purpose of completing said railroad or for any other purpose.

Par. 29. That more than ninety days prior to the commencement of this action a letter was written to the governor of the State of Iowa, and also to the proper officers of the said Sioux City and St. Paul Railroad Company, demanding a reconveyance of the lands described in par. 21 of the bill of complaint herein and a relinquishment of all claims of the said defendant and the said State thereto.

To par. 29 and the exhibits referred to therein all of the defendants object as immaterial and irrelevant.

Par. 30. That Exhibit "A," attached to the answer of defendant The Sioux City & St. Paul Railroad Company, is a true and correct map and correctly shows the various lines and routes of the location and construction of the railroads of the Sioux City and St.

Paul Railroad Company, the McGregor Western Railroad Company and its successor, the Chicago, Milwaukee and St. Paul Railway Company; the Dubuque Pacific Railroad Company and its successors, the Iowa Falls and Sioux City Railroad Company and the Illinois Central Railroad Company, except the first line of location of the McGregor Western Railroad Company does not appear thereon, and except further that the plaintiff does not admit the correctness of the lines representing the place and indemnity limits.

Par. 31. It is further agreed that the annexed certified map, Exhibit 23, is a true copy of the map made by the Land Commissioner of the United States in the year 1887, showing the lines of location and construction of the said Sioux City and St. Paul Railroad Company for the aforesaid fifty miles thereof, and also showing the place and indemnity limits of the said grant as then ascertained and determined by him for said fifty miles.

To par. 31 and exhibits referred to therein all of the defendants object for the reason that the same is immaterial and irrelevant.

Par. 32. That Exhibit No. 24 is a correct list of all the odd-numbered sections and parts of sections lying within the conflicting 10-mile limits of the grant to the State of Iowa by an act of May 12th, 1864, to aid in the construction of the Sioux City and St. Paul railroad and the Chicago, Milwaukee and St. Paul railroad, according to the limits as defined and laid down on the map, Exhibit No. 23, hereto attached, and correctly shows the area of each of said tracts.

To par. 32 and exhibit referred to therein all of the defendants object for the reason that the same is immaterial and irrelevant.

Par. 33. That Exhibit No. 25 is a correct list of the odd-numbered sections and parts of sections and the areas thereof within the 10-mile limits of the grant to the State of Iowa by
92 act of May 12, 1864, for the Sioux City and St. Paul Railroad Company outside of the conflicting limits with the grant to the Chicago, Milwaukee and St. Paul Railroad Company for the first fifty miles of said road from the Minnesota State line southward, according to the place limits, as defined and certified on map Exhibit No. 23 hereof.

To par. 33 and exhibit therein referred to all of the defendants object for the reason that the same is immaterial and irrelevant.

Par. 34. That Exhibit No. 26 is a correct list of the odd-numbered sections and parts of sections and the areas thereof lying within the conflicting 10-mile limits of the grant to the State of Iowa by act of May 12, 1864, to aid in the construction of the Sioux City and St. Paul railroad and the Chicago, Milwaukee and St. Paul railroad, according to the diagram of withdrawal transmitted to the local land office at Sioux City, Iowa, being Exhibit No. 8.

To par. 34 and exhibit therein referred to all of the defendants object for the reason that the same is immaterial and irrelevant.

Par. 35. That Exhibit No. 27, hereto attached, is a correct list of the odd-numbered sections and parts of sections and the areas thereof within the 10-mile limits of the grant to the State of Iowa by act of May 12th, 1864, for the Sioux City and St. Paul Railroad Company

and outside of the conflicting limits with the grant for the Chicago, Milwaukee and St. Paul Railway Company, according to the diagram of withdrawal transmitted to the locao land office at Sioux City, Iowa, August 26th, 1867, a copy of which diagram is hereto attached as Exhibit No. 81, and within the terminal limit of the five 10-mile sections as defined on Exhibit No. 23.

To par. 35 and the exhibits therein referred to all of the defendants object for the reason that the same is immaterial and irrelevant.

Par. 36. That all the lands lying within the indemnity limits of said grant, conferred by the State of Iowa upon the Sioux City and St. Paul Railroad Company, which have heretofore been patented or certified by the State of Iowa to the said company, have been by it sold and conveyed to innocent purchasers.

To par. 36 and the exhibits therein referred to all of the defendants object for the reason that the same is immaterial and irrelevant.

Par. 37. That the average value of the more remote of the indemnity lands on both sides of the said grant was at the date of the commencement of this action $7 per acre.

Par. 38. That in the year 1872 the Sioux City and St. Paul Railroad Company constructed from the north line of the corporate limits of Sioux City within the said city one and one-tenth miles of track and erected and built in said city machine shops, depots, and round-houses of the value of $125,000; that of the aforesaid sum the sum of $30,000 was paid to the said railroad company out of the proceeds of a special tax levied and collected from the taxable property within the township of Sioux City, in the county of Woodbury and State of Iowa, which tax was voted, assessed, levied, and collected under and by virtue of the statute of the State of Iowa pro-

93 *f*iding for aiding in the construction of railways within said State.

The poaintiff objects to the first sentence of par. 38 on the ground that the same is immaterial and irrelevant.

Par. 39. That in the year 1879 the Sioux City and St. Paul Railroad Company sold and conveyed to the St. Paul and Sioux City Railroad Company its road-bed, rolling stock, depots, depot grounds, and other property and franchises used in connection with the operating of its railway, a copy of which deed is hereto annexed and marked Exhibit No. 28; that in the year 1881 the St. Paul and Sioux City Railroad Company sold and conveyed all of said property and franchises so obtained from the Sioux City and St. Paul Railroad Company to the Chicago, St. Paul, Minneapolis and Omaha Railroad Company, which company still owns and operates the said road, a copy of which deed is hereto attached, marked Exhibit No. 29; that the Sioux City and St. Paul Railroad Company has remaining no other property or assets except such lands as may enure to it under the grant in said act of Congress of May 12th, 1864, out of the lands patented to the State of Iowa and not conveyed by said State to said railroad company, all of which lands are pledged as security for the indebtedness referred to in par. 50 hereof.

Par. 40. That the St. Paul and Sioux City Railroad Company had constructed its line of road as provided for under the act of Congress of March 3, 1857, granting lands to the State of Minnesota to aid in the construction of said road, and the act of the legislature of Minnesota conferring such lands upon the said St. Paul and Sioux City Railroad Company during the year 1872 to the southern boundary of the St-te of Minnesota, in township 100, range 40, and the Sioux City and St. Paul railroad was so constructed as to form a continuous line with the said road; that upon the construction of the Sioux City and St. Paul railroad from the south line of the State of Minnesota to Le Mars it obtained by lease the right to run and operate its trains over the road of the Iowa Falls and Sioux City railroad from Le Mars to Sioux City, and from that time the said Sioux City and St. Paul Railroad Company and the St. Paul and Sioux City Railroad Company and their grantees have continued to run and operate the same as one continuous line of railroad from St. Paul, in Minnesota, to Sioux City, Iowa.

Plaintiff objects to the facts stated in par. 40 hereof as irrelevant and immaterial.

Par. 41. That prior to the times when the lines of routes of said roads provided for in act of May 12, 1864, were definitely located the United States had sold or the right of pre-emption or homestead settlement had attached or there had been reserved by the United States such lands as that there then remained of the odd-numbered sections within the ten-mile limits of the Sioux City and St. Paul railroad, as the same appears on the diagram of withdrawal transmitted to the register and receiver of the United States land office at Sioux City, Iowa, on the 26th day of August, 1867, 212,067.66 acres. Of these lands 50,536.72 acres were within the overlapping ten-mile limits of the Chicago, Milwaukee and St. Paul Railroad Company, one-half of which was by decree aforesaid awarded to that company; that within the 20-mile limits or indemnity limits of the said Sioux City & St. Paul R. R. Co. as shown by the said diagram such of the lands had been so disposed of or reserved as that there remained only 195,842.55 acres. Of these lands 54,165.55 acres were by the said decree awarded to the Chicago, Milwaukee and St. Paul Railway Company.

94 Par. 42. That of the 186,797.80 acres remaining within the said granted limits, after deducting the amount awarded to the Chicago, Milwaukee and St. Paul Railway Company, there had been by the State of Iowa certified to the Sioux City and St. Paul Railroad Company 171,546.71 acres, and of the 141,637 acres remaining in the indemnity limits, after deducting the amount so awarded to the Milwaukee Company, there has been certified by the State of Iowa to the said Sioux City & St. Paul Railroad Company 109,178.58 acres.

Par. 43. That there were patented or certified by the State of Iowa to the Sioux City and St. Paul Railroad Company of the lands patented to the said State pursuant to the said grant of May 12, 1864, as aforesaid, in all 322,412.81 acres; and that of said lands there remained in said company or its grantees or assigns, after de-

ducting the lands set apart to the Chicago, Milwaukee and St. Paul -ailroad Company by the aforesaid decree in partition, 280,725.29 acres.

Par. 44. That on the 16th day of March, 1882, an act of the legislature of the State of Iowa entitle- "An act to resume all the lands and rights conferred upon the Sioux City and St. Paul Railroad Company by or under act of Congress approved May 12, 1864, of lands not heretofore earned by said company," being chapter 107 of the Laws of the Nineteenth General Assembly of said State of Iowa, was duly passed and approved, a copy of which is hereto annexed as Exhibit No. 30.

All of the defendants object to paragraph 44 and exhibits referred to therein for the reason that the same are immaterial and irrelevant.

Par. 45. That an act of the legislature of the State of Iowa entitled "An act to relinquish and reconvey to the United States all lands and rights to lands granted to the State of Iowa in alternate sections to aid in the construction of a railroad in the State of Iowa, approved May 12, 1864, which had not been earned pursuant to the provisions of said act," was on th- 27th day of March, 1884, duly passed and approved, being chapter 71 of the Laws of the Twentieth General Assembly of the State of Iowa, a copy of which is hereto atttached as Exhibit No. 31 hereof; that pursuant to the aforesaid acts of the legislature the governor of the State of Iowa did, on the 12th day of Jan., A. D. 1887, relinquish and reconvey to the United States 26,017.33 acres of the aforesaid lands patented by the United States to the State of Iowa, which lands were situated in Plymouth and Woodbury counties, in said State.

All the defendants object to par. 45 and exhibits referred to therein for the reason that the same are immaterial and irrelevant.

Par. 46. That of the lands described in par. 21 of the plaintiff's bill the following-described portions thereof are located within the ten-mile limits of that portion of said grant conferred by the State of Iowa upon the Sioux City and St. Paul Railroad Compan-, as shown by the diagram of withdrawal sent to the register and receiver of the United States land office at Si-ux City, Iowa, August 26, 1867.

95 *O'Brien County.*

Description.	Section.	Township.	Range.	Acres.
S w ¼ of n w ¼	7	97	40	36.50
W ½	5	95	41	318.64
All	7	95	41	602.00
N e ¼ of n w ¼	3	96	41	39.94
S e ¼ of n e ¼	15	96	41	40.00
S w ¼ of s w ¼	13	97	41	40.00
E ½ of s w ¼ & n e ¼ of s e ¼	35	97	41	120.00
All	1	95	42	641.36
N ½ s w ¼, n ½ of s e ¼, & s e ¼ of s e ¼	5	95	42	590.82
S e ¼ n w ¼, w ½ n w ¼, & s e ¼	7	95	42	390.41
All	9	95	42	640.00
S ½ n e ¼, s ½ n w ¼, & s ½	11	95	42	560.00
All	15	95	42	640.00
All	17	95	42	640.00
E ½ n e ¼, w ½ s w ¼, s e ¼ s w ¼, & s e ¼	19	95	42	353.49
All	21	95	42	640.00
All	3	96	42	646.16
S ½	5	96	42	320.00
N w ¼ n e ¼ & e ½ s e ¼	7	96	42	120.00
All	11	96	42	640.00
All	15	96	42	640.00
W ½	17	96	42	320.00
S w ¼ n e ¼, s e ¼ n w ¼, & n w ¼ n w ¼	19	96	42	116.17
All	23	96	42	640.00
All	29	96	42	640.00
E ½ s e ¼	31	96	42	80.00
All	33	96	42	640.00
All	3	97	42	595.60
S w ¼ n e ¼, n e ¼ n w ¼, & n w ¼ s e ¼	7	97	42	120.00
All	9	97	42	640.00
All	17	97	42	640.00
E ½ n e ¼ & e ½ s e ¼	19	97	42	160.00
All	25	97	42	640.00
S ½	29	97	42	320.00
S e ¼ n e ¼ & n e ¼ s e ¼	31	97	42	80.00
S ½	33	97	42	320.00
All	35	97	42	640.00
				15,251.09

And the following-described lands are located within the twenty-mile limits of said grant as shown in said diagram :

Dickinson County.

Description.	Section.	Township.	Range.	Acres.
All	15	98	38	640.00
N w ¼	17	98	38	160.00
O'Brien County.				
S ½ of n w ¼ & s w ¼	9	95	40	240.00
S e ¼ & s w — & s ½ of n ½	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W ½	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
All	23	95	42	640.00
All	27	95	42	640.00
96 S ½	29	95	42	320.00
E ½ n e ¼ & s e ¼ n w ¼	31	95	42	120.00
				6,728.76

To par. 46 the plaintiff objects as immaterial.

Par. 47. That the said lands have been placed upon the State and county tax-rolls for the counties where the same are situated for the year 1884 and subsequent years and taxes assessed and levied thereon each year, which this defendant has paid, as shown by Exhibit No. 32, hereto attached.

To par. 47 and the statement of taxes therein contained the plaintiff objects as immaterial and irrelevant.

Par. 48. That on the first day of August, 1871, the Sioux City and St. Paul Railroad Company made, executed, and delivered to Elias F. Drake and Alexander H. Rice a certain trust deed or mortgage upon all the lands claimed by said Sioux City and St. Paul Railroad Company so enuring to it under said act of Congress of May 12, 1864, lying and being within the State of Iowa, a copy of which trust deed is hereto attached and marked Exhibit No. 33; that afterwards the said Alexander H. Rice resigned as such trustee and Amherst H. Wilder was duly appointed and substituted as such trustee.

To par. 48 and the exhibit therein referred to the plaintiff objects as immaterial and irrelevant, and for the further reason that

the same and the said pretended trust deed therein referred to are incompetent and void as being in violation of the law and of the terms and conditions of the aforesaid act of Congress of May 12, 1864.

Par. 49. That afterwards and on the 5th day of Feb., 1884, the said Sioux City and St. Paul Railroad Company made, executed, and delivered to these defendants, Elias F. Drake and Amherst H. Wilder, a further or confirmatory deed or mortgage. A copy of said confirmatory deed or mortgage of the lands in O'Brien Co., Iowa, is hereto annexed and marked Exhibit No. 34.

A deed of identical from and substance except in the description of the bands being made for the lands in each county in which the lands are situated.

To par. 49 and exhibit therein referred to the plaintiff objects as immaterial and irrelevant, and for the further reason that the same and the pretended trust deed therein referred to are incompetent and void as being in violation of law and of the terms and conditions of the aforesaid act of Congress of May 12, 1864.

Par. 50. That the said mortgages or trust deeds were given for the purpose of securing and providing for the payment of principal and interest of $2,800,000 of bonds of the kind and form described in trust deed; that the said railroad company have realized by the sale of said lands the money to pay and retire $2,140,000 of said bonds; that there is still outstanding $660,000 of said bonds.

To par. 50 and exhibits therein referred to the plaintiffs object- as immaterial and irrelevant, and for the further reason that the same and the pretended trust deeds therein referred to are incom-
97 petent and void as being in violation of law and of the terms and conditions of the aforesaid act of Congress of May 12, 1864.

Par. 51. That Exhibit No. 35 is a correct list of that portion of the lands referred to in par. 21 of plaintiff's petition now occupied by persons who entered thereon between the years 1882 and 1885 and made claim thereto under the homestead and pre-emption laws of the United States; that said parties filed applications to enter said lands with the register and receiver of the U. S. land office at Des Moines, Iowa, which applications were rejected and appeals taken from said decisions, and said parties have ever since continued to improve and cultivate said lands under and by virtue of said claims and in some instances have made valuable improvements thereon; that the Sioux City and St. Paul R. R. Co. has commenced action in the dist. court of O'Brien Co., Iowa, in ejectment against the parties so in possession of said lands, which actions are still pending.

To the foregoing statement all of the defendants object as immaterial and irrelevant.

Par. 52. That the Sioux City and St. Paul R. R. Co. did in the year 1869 make and file in the U. S. land office at Sioux City, Iowa, selections of all the lands undisposed — in the odd-numbered sections embraced within the place and indemnity limits of said grant and embracing all the lands patented by the United States to the State of Iowa for the use and benefit of the Sioux City and St. Paul R. R. Co.; that said defendant company demanded of the Secretary

of the Interior the issuance of said patents to the State of Iowa for its use and benefit.

Par. 53. That the country through which the said road was located was wholly a prairie country, and at the passage of the said act of Congress and up to the time of the construction of the defendant's railroad there were but very few settlers in the region of the country c-vered by the grant north of the north line of Plymouth county and with but few attempts at farming, and in the more northern counties through which the road was located the land was mostly Government lands, and the same was true of the southerly counties in the State of Minnesota through which passes the St. Paul and Sioux City railroad, with which this defendant's road connected at the State line.

To par. 53 plaintiff objects as immaterial and irrelevant.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

98 And on the 12th day of June, A. D. 1890, there was filed in the office of the clerk of said court as testimony in said cause the following exhibits, to wit:

Exhibit No. 7.—Copy of letter of O. H. Browning, Secretary of the Department of the Interior, date- July 16, 1867, addressed to Hon. Jas. S. Wilson, Commissioner of General Land Office.

Exhibit No. 10.—Certified copies on pages 1, 2, 3, 4, 5, and 6 of certificates by the governor of Iowa as to the construction of fifty miles of road by the Sioux City and St. Paul Railroad Company; certificate dated April 2nd, 1889.

Exhibit No. 11.—Certified copy of patent issued to the State of Iowa October 16th, 1872; certificate dated Feb. 17, 1890.

Exhibit No. 12.—Certified copy of patent issued to the State of Iowa June 17th, 1873; certificate dated Feb. 17th, 1890.

Exhibit No. 13.—Certified copy of patent issued to the State of Iowa January 25th, 1875; certificate dated Feb. 17th, 1890.

Exhibit No. 14.—Certified copy of patent issued to the State of Iowa June 4th, 1877; certificate dated Feb. 17th, 1890.

Exhibit No. 15.—Copy of an act authorizing and directing the governor to certify to the Sioux City and St. Paul Railroad Company certain lands named therein.

Exhibit No. 16.—Copy of bill of complaint, Chicago, Milwaukee & St. Paul Railroad Company against The Sioux City and St. Paul Railroad Company, in circuit court of the United States for the district of Iowa, signed by John W. Cary, solicitor for complainant, Thos. Updyraff, of counsel.

Exhibit No. 17.—Copy of the joint and several answers of the Sioux City and St. Paul Railroad Company, Alexander H. Rice and Elias Drake, trustees, to the bill of complaint of the Chicago, Milwaukee and St. Paul Railway Company, in circuit court of the United States for the district of Iowa.

Exhibit No. 18.—Copy of answer of John H. Gear, governor, and James K. Power, register of the State land office, of the State of Iowa,

to the bill of complaint in cause of Chicago, Milwaukee and St. Paul Railroad Company *vs.* The Sioux City and St. Paul Railroad Company *et al.*, in circuit court of the United States for the district of Iowa, May term, 1879.

Exhibit No. 19.—Copy of the decree in the circuit court of the United States, district of Iowa, May 21st, 1886, in cause Chicago, Milwaukee & St. Paul Railway Company *et al.*, No. 1481, equity.

Exhibit No. 20.—Copy of Commissioner's report in partition and order of confirmation in cause of Chicago, Milwaukee and St. Paul Railway Company *vs.* Sioux City and St. Paul Railroad Company.

Exhibit No. 21.—Opening and ruling, Department of the Interior, General Land Office, July 26, 1887, L. Q. C. Lamar, Secretary.

99 There was also filed on said 12th day of June, A. D. 1890 in said cause the following maps, to wit:

Exhibit No. 8.—Certified diagram by Lewis H. Groff, Commissioner of General Land Office, dated Feb. 17, 1890, of a copy of the diagram showing the limits of the grant by act of May 12, 1864, to the State of Iowa for the Sioux City and St. Paul railroad Company, certificate dated Feb. 17, 1890, and attached thereto a certified copy by S. M. Stockloger, Commissioner of the General Land Office, dated April 2, 1889, of Commissioner's letter of August 26, 1867, to the local officers at Sioux City, Iowa, ordering a withdrawal of lands for the Sioux City and St. Paul R. R. Co., said map being endorsed: No. 104. Equity. "Filed June 12th, 1890. A. J. Van Duzee, clerk; J. H. Bolton, deputy."

Exhibit No. 9.—Certified tracing by S. M. Stocklager, Commissioner of General Land Office, dated April 2, 1889, showing the constructed road of the Sioux City and St. Paul Railroad Company from the Minnesota State line to Le Mars, Iowa, same being endorsed: "No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk; J. H. Bolton, dep."

Exhibit No. 22.—Certified diagram, S. M. Stocklager, Commissioner of General Land Office, dated April 2nd, 1889, showing the lines of the Sioux City and St. Paul railroad in Iowa as definitely located and constructed under the act of May 12, 1864, the limits of the withdrawal for the company under said act, the northern and southern terminals of the grant, and the conflicting limits of the grant with those by the same act to the McGregor Western, now Chicago, Milwaukee and St. Paul, Railway Company, same being endorsed: "No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk, J. H. Bolton, deputy."

Exhibit No. 23.—Certified diagram, Lewis A. Groff, Commissioner of General Land Office, date- Feb. 17, 1890, being a copy of the diagram prepared by General Land Office showing the lines of definite location and construction of the Sioux City and S. Paul railroad, the limits of the grant to the State of Iowa by act of May 12, 1864, for said road, corrected by a more accurate measur-ment, the conflicting limits of said grant with those of the grant to Chicago, Milwaukee and S. Paul railroad, and the terminal limit for constructed road bui-t within the time prescribed by the law, the same being

endorsed: "No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk; J. H. Bolton, deputy."

The original Exhibits Nos. 8, 9, 22, & 23 are transmitted to the Supreme Court in accordance with the decree in this cause, dated Oct. 8, A. D. 1890.

Said exhibits other than Nos. 8, 9, 22, & 23 are in the words and figures, following, to wit:

100 Exhibit No. 24.—Certified copy of a list of lands showing the odd-numbered sections and parts of sections and the areas thereof lying within the conflicting ten-mile limits of the grants to the State of Iowa by act of May 12, 1864, to aid in the construction of the Sioux City & St. Paul and Chicago, Milwaukee and St. Paul railroads; certificate dated Feb. 17, 1890.

Exhibit No. 25.—Certified copy of a list of lands showing the odd-numbered sections and parts of sections and the areas within the ten-mile limit of the grant to the State of Iowa by act of May 12, 1864, for the Sioux City & St. Paul Railroad Company and outside the conflicting limits with the grant to the Chicago, Milwaukee and St. Paul railroad; certificate dated Feb. 17, 1890.

Exhibit No. 26.—Certified copy by Lewis H. Groff, Commissioner of General Land Office, of a list of lands showing the odd-numbered sections and parts of sections and the areas thereof lying within the conflicting ten-mile limits of the grants to the State of Iowa by the act of May 12, 1864, to aid in the construction of the Sioux City & St. Paul railroad and the Chicago, Milwaukee and St. Paul railroad; certificat- dated Feb. 17, 1890.

Exhibit No. 27.—Certified copy by Lewis H. Groff, Commissioner of General Land Office, of a list of lands showing the odd-numbered sections and parts of sections and the areas thereof within the ten-mile limits of the grant to the State of Iowa by act of May 12, 1864, for the Sioux City and St. Paul Railroad Company and outside the conflicting limits with the grant for the Chicago, Milwaukee and St. Paul railroad; certificate dated Feb. 17, 1890.

Exhibit No. 28.—Copy of the indenture, made the first day of September, A. D. 1879, by and between the Sioux City and St. Paul Railroad Compayn and the St. Paul and Sioux City Railroad Company.

Exhibit No. 29.—Copy of the indenture, made the 9th day of May, A. D. 1881, between the St. Paul and Sioux City Railroad Company and the Chicago, St. Paul, Minneapolis and Omaha Railroad Company.

Exhibit No. 30.—Chapter 107, S. C. & St. P. land grant resumed, An act to resume all lands and rights conferred upon the Sioux City & St. Paul Railroad Company by or under an act of Congress approved May 12, 1864, to lands not heretofore earned by said company.

Exhibit No. 31.—Chapter 107, to relinquish certain lands, An act to relinquish and reconvey to the United States all lands and rights to lands granted to the State of Iowa by the act of Congress approved May 12, 1864, A. D.

Exhibit No. 33.—Copy of trust deed, made 1st day of August,

A. D. 1871, Sioux City and St. Paul Railroad Company to Alexander H. Rice and Elias F. Drake, trustees.

Exhibit No. 34.—Copy of trust deed, date- 25th day of Feb. A. D. 1884, Sioux City and St. Paul Railroad Company to Elias F. Drake and Amherst H. Wilder, trustees.

Exhibit No. 35.—O'Brien county lands.

101 EXHIBIT No. 7.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *July* 16, 1867.

SIR: Herewith I transmit a map, duly authenticated, showing the definite location of the Sioux City and St. Paul railroad. This map is acceptee and will become the basis for the adjustment of the land grant made to the State of Iowa to aid in the construction of this road by the act approved May 12, 1864. You will issue the necessary instructions to the local land officers to withdraw the land so granted to the State.

Very respectfully, your obedient servant,
O. H. BROWNING, *Secretary.*

Hon. Jos. S. Wilson, Com'r of General Land Office.

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk; J. H. Bolton, deputy.

102 EXHIBIT 9.

6–5907. DEPARTMENT OF THE INTERIOR, S. S. M.
GENERAL LAND OFFICE, C. M. W.
WASHINGTON, D. C., *April* 2, 1889.

I, S. M. Stockloger, Commissioner of the General Land Offiee, do hereby certify that the annexed copies on pages 1, 2, 3, 4, 5, and 6 of the certificates by the governor of Iowa as to the construction of fifty miles of road by the Sioux City and St. Paul Railroad Company are true and literal exemplifications from the originals on file in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKLOGER,
Commissioner of the Gen. Land Office.

Ex. 10.

A. H.; B. M. P.

STATE OF IOWA, EXECUTIVE DEPARTMENT,
DES MOINES, —— —, 1872.

I, Cyrus C. Carpenter, governor of the State of Iowa, do hereby certify that two sections of railroad have been constructed from the south line of the State of Minnesota southerly in the direction of

Sioux City, through the counties of Osceola & O'Brien, in the State of Iowa, in accordance with the provisions of an act of Congress entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12, 1864; that each of said sections comprises ten consecutive miles of road, in all twenty miles, on which cars are now running, and that the sections so constructed as aforesaid are completed in a good and substantial manner, in all respects suitable for a first-class railroad.

In testimony whereof witness my hand and the great [SEAL.] seal of the State of Iowa this twenty-sixth day of July, A. D. 1872.

C. C. CARPENTER.

E. WRIGHT,
Secretary of State.

The Secretary of the Interior, Washington, D. C.

103 A. H.; B. M. P.

STATE OF IOWA, EXECUTIVE DEPARTMENT,
DES MOINES, *August* 10, 1872.

To the Secretary of the Interior:

I, Cyrus C. Carpenter, governor of the State of Iowa, do hereby certify that a section of ten miles of railroad has been constructed in the counties of O'Brien and Sioux, in the State of Iowa, in the direction of Sioux City, commencing at the southern end of the sections of road the construction of which was certified by me to the Secretary of the Interior on the 26th day of July ultimo, and making in all thirty continuous miles of railroad now constructed from the south line of the State of Minnesota southerly in the direction of Sioux City, Iowa, in accordance with an act of Congress entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12, 1864.

And I do further certify that said section comprises ten consecutive miles of road; that cars are now running thereon, and that said section is constructed in a good and substantial manner, and is in all respects suitable for a first-class railroad.

In testimony whereof witness my hand and the great [SEAL.] seal of the State of Iowa this tenth day of August, A. D. 1872.

C. C. CARPENTER.

By the governor:

E. WRIGHT,
Secretary of State.

A. H.; B. M. P.

STATE OF IOWA, EXECUTIVE DEPARTMENT,
DES MOINES, *February* 4, 1873.

To the Secretary of the Interior:

I, Cryus C. Carpenter, governor of the State of Iowa, do hereby certify that of the "railroad from Sioux City, in said State, to the south line of the State of Minnesota," as contemplated in an act of Congress entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12, 1864, there have been constructed, in addition to the three sections of ten miles each heretofore certified by me, two more sections of ten miles each, to wit, one section of ten miles prior to August 10th, 1872, and another section prior to September 10th, 1872; that such sections of road are completed in a good and substantial manner and in all respects suitable for a first-class railroad, and that cars are now running on said sections of road.

104 In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa this
[SEAL.] fourth day of February, A. D. 1873.

C. C. CARPENTER.

By the governor:
JOSIAH T. YOUNG,
Secretary of the State.

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

EXHIBIT 11.

C.

$\frac{1890}{13644}$. DEPARTMENT OF THE INTERIOR, S. S. M.
GENERAL LAND OFFICE, M. J. D.
WASHINGTON, D. C., *Feb.* 17, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of the patent issued to the State of Iowa October 16th, 1872, for the Sioux City and St. Paul Railroad Company under the act of Congress approved May 12th, 1864, is a true and literal exemplification from the record thereof in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS H. GROFF,
Commissioner of General Land Office.

105 The United States of America to all to whom these presents shall come, Greeting:

Whereas by an act of Congress approved May 12th, 1864, entitled "An act for a grant of lands to the State of Iowa, in alternate

sections, to aid in the construction of a railroad in said State from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west branch of the Des Moines rivers, every alternate section of land designated by odd numbers for ten sections in width on each side of said road;

And whereas it is further enacted that "in case it shall appear that the United States have, when the line of route of said road is definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same," then so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold or reserved or otherwise appropriated or to which the right of pre-emption or homestead settlement has attached shall be held by the State of Iowa for the uses and purposes aforesaid: Provided that the lands so selected shall in no case be located more than twenty miles from the line of said road;

And whereas there has been filed in this office through the Secretary of the Interior, under dates of July 26th and August 10th, 1872, evidence of the completion of the first, second, and third sections of ten miles each of the Sioux City and Saint Paul railroad, from the south line of the State of Minnesota southerly in the direction of Sioux City, making in all thirty continuous miles of said road;

And whereas the sections and parts of sections of land enuring to the State of Iowa in aid of the construction of the Sioux City and Saint Paul railroad for the said thirty miles of road has been selected and reported to this office in accordance with the act and rules and regulations of the General Land Office, as shown by the original list of selections dated August 1st, 1872, and certified under same date by the register and receiver at Sioux City, Iowa, the tracts being described as follows, to wit:

North of Base Line and West of Fifth Principal Meridian, Iowa.

Ten-mile limits.

Township one hundred, range thirty-nine.

The lots numbered one, two, and three of section seven, containing one hundred and sixty-two acres and forty-two hundredths of an acre.

The lots numbered one, seven, and eight of section nine, containing one hundred and forty-two acres and three-hundredths of an acre.

Township one hundred, range forty-two.

West half of northeast quarter, west half of southeast quarter, and west half of section nineteen, containing four hundred and sixty-eight acres.

West half of the northeast quarter, west half of southeast quarter, and the west half of section thirty-one, containing four hundred and seventy acres and ninety-six hundredths of an acre.

106 Township one hundred, range forty-three.

All of section thirteen, containing six hundred and forty acres.

Township ninety-nine, range forty-two.

West half of northeast quarter, west half of southeast quarter, and west half of section seven, containing four hundred and sixty-nine acres and thirty-four hundredths of an acre.

West half of northeast quarter, west half of southeast quarter, and west half of section nineteen, containing four hundred and sixty-five acres and two-hundredths of an acre.

West half of northeast quarter, west half of southeast quarter, and west half of section thirty-one, containing four hundred and sixty acres and ninety-six hundredths of an acre.

Township ninety-nine, range forty-three.

All of section one, containing six hundred and forty-six acres and fifty-six hundredths of an acre; all of section 11, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing 640 acres; all of sections twenty-one, containing six hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section thirty-one, containing six hundred and twelve acres and thirty-two hundredths of an acre; all of section thirty-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

Township ninety-eight, range forty-two.

West half of northeast quarter, west half of southeast quarter, and west half of section seven, containing four hundred and forty-two acres and forty-hundredths of an acre.

West half of the northeast quarter, west half of southeast quarter, and west half of section nineteen, containing four hundred and forty-two acres and twenty-hundredths of an acre; west half of northeast quarter, west half of southeast quarter, and west half of section thirty-one, containing four hundred and sixty-one acres and twenty-hundredths of an acre.

Township ninety-eight, range forty-three.

All of section one, containing six hundred and seventy-one acres and six-hundredths of an acre; all of section three, containing six hundred and sixty-two acres and forty-five hundredths of an acre.

All of section seven, containing five hundred and ninety-two acres and twenty-hundredths of an acre.

All of section nine, containing six hundred and forty acres.
All of section eleven, containing six hundred and forty acres.
All of section thirteen, containing six hundred and forty acres.
All of section fifteen, containing six hundred and forty acres.
All of section seventeen, containing six hundred and forty acres.
All of section nineteen, containing five hundred and ninety-four acres and four hundredths of an acre.
All of section twenty-three, containing six hundred and forty acres.
All of section twenty-five, containing six hundred and forty acres.
All of section twenty-seven, containing six hundred and forty acres.
All of section twenty-nine, containing six hundred and forty acres.
All of section thirty-one, containing six hundred and forty acres.

107 Township ninety-eight, range forty-four.

All of section thirteen, containing six hundred and forty acres.
All of section twenty-three, containing six hundred and forty acres.
All of section twenty-five, containing six hundred and forty acres.
All of section twenty-nine, containing six hundred and forty acres.
All of section thirty-one, containing six hundred six acres and fifty-six hundredths of an acre.
All of section thirty-three, containing six hundred and forty acres.
All of section thirty-five, containing six hundred and forty acres.

Township ni*e*nty-eight, range forty-five.

All of section thirty-five, containing six hundred and forty acres.

Township n*e*inty-seven, range forty-two.

West half of northeast quarter, west half of southeast quarter, and west half of section seven, containing four hundred and sixty-two acres and sixty-four hundredths of an acre.
West half of northeast quarter, west half of southeast quarter, and west half of section nineteen, containing four hundred and seventy acres and eighty-eight hundredths of an acre.
West half of northeast quarter, west half of southeast quarter, and west half of section thirty-one, containing four hundred and seventy-three acres and ninety-eight hundredths of an acre.

Township ninety-seven, range forty-three.

All of section one, containing six hundred acres and ninety-two hundredths of an acre.
All of section three, containing six hundred and eight acres.
North half of section five, containing two hundred and seventy acres.
West half of section seven, containing two hundred and ninety-six acres and sixteen-hundredths of an acre.
All of section nine, containing six hundred and forty acres.
All of section eleven, containing 640 acres.

All of section thirteen, containing six hundred and forty acres.
All of section fifteen, containing six hundred and forty acres.
All of section seventeen, containing six hundred and forty acres.
All of section nineteen, containing six hundred and fourteen acres and ninety-two hundredths of an acre.
All of section twenty-one, containing six hundred and forty acres.
All of section twenty-three, containing six hundred and forty acres.
All of section twenty-seven, containing six hundred and forty acres.
All of section twenty-nine, containing six hundred and forty acres.
All of section thirty-one, containing six hundred and twenty-one acres and thirty-six hundredths of an acre.
All of section thirty-three, containing six hundred and forty acres.

Township ninety-seven, range forty-four.

North half of section one, containing two hundred and eighty-three acres and nine-y-four hundredths of an acre.
All of section three, containing six hundred and twenty-six acres and ninety-two hundredths of an acre.
All of section five, containing six hundred and ten acres and twenty-hundredths of an acre.
108 All of section seven, containing five hundred and eighty acres and sixty-eight hundredths of an acre.
All of section nine, containing six hundred and forty acres.
All of section thirteen, containing six hundred and forty acres.
All of section fifteen, containing six hundred and forty acres.
All of section seventeen, containing six hundred and forty acres.
All of section nineteen, containing five hundred and eighty-six acres and twenty-hundredths of an acre.
All of section twenty-one, containing six hundred and forty acres.
All of section twenty-three, containing six hundred and forty acres.
All of section twenty-five, containing six hundred and forty acres.
All of section twenty-seven, containing six hundred and forty acres.
All of section twenty-nine, containing six hundred and forty acres.
Northeast quarter of northwest quarter, west half of northwest quarter, east half of the southwest quarter, and east half of section thirty-one, containing five hundred and two acres and sixty-hundredths of an acre.
All of section three, containing six hundred and forty acres.
All of section thirty-five, containing six hundred and forty acres.

Township ninety-seven, range forty-five.

All of section one, containing five hundred and ninety-two acres and sixty-two hundredths of an acre.
All of section three, containing five hundred and ninety-three acres and thirty-four hundredths of an acre.
All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.
All of section thirteen, containing six hundred and forty acres.
All of section fifteen, containing six hundred and forty acres.
All of section nineteen, containing six hundred acres and four-hundredths of an acre.
All of section seventeen, containing six hundred and forty acres.
All of section twenty-one, containing six hundred and forty acres.
All of section twenty-three, containing six hundred and forty acres.
All of section twenty-five, containing six hundred and forty acres.
All of section twenty-seven, containing six hundred and forty acres.
All of section twenty-nine, containing six hundred and forty acres.
All of section thirty-one, containing five hundred and ninety-eight acres and four-hundredths of an acre.
All of section thirty-three, containing six hundred and forty acres.
All of section thirty-five, containing six hundred and forty acres.

Township ninety-seven, range forty-six.

All of section twenty-five, containing six hundred and forty acres.
All of section thirty-five, containing six hundred and forty acres.

Township ninety-six, range forty-two.

West half of northeast quarter, west half of southeast quarter, and the west half of section seven, containing four hundred and seventy-two acres and twelve-hundredths of an acre.
West half of northeast quarter, west half of southeast quarter, and west half of section nineteen, containing four hundred and sixty-six acres and seventy-two hundredths of an acre.
West half of northeast quarter, west half of the southeast quarter, and west half of section thirty-one, containing four hundred and sixty-seven acres and twenty-hundredths of an acre.

109 Township ninety-six, range forty-three.

Northwest quarter of northeast quarter of section seven, containing forty acres.

Township ninety-six, range forty-four.

Northwest quarter of the northwest quarter of section five, containing thirty-nine acres and twenty-four hundredths of an acre.
Southwest quarter of southwest quarter of section seven, containing thirty-four acres and eighty-two hundredths of an acre.
Southeast quarter of southeast quarter of section nine, containing forty acres.
Southwest quarter of northwest quarter of section eleven, containing forty acres.
Northeast quarter of northeast quarter and northwest quarter of northwest quarter of section twenty-seven, containing eighty acres.

Township ninety-six, range forty-five.

North half of northwest quarter of section twenty-three, containing eighty acres.

Northeast quarter of northeast quarter of section twenty-seven, containing forty acres.

Township ninety-six, range forty-six.

Northeast quarter of northeast quarter, northwest quarter of northwest quarter, and the northeast quarter of southwest quarter of section thirteen, containing one hundred and twenty acres.

Southeast quar-er of southeast quar-er of section fifteen, containing forty acres.

Northwest quarter of southeast quarter of section twenty-nine, containing forty acres.

N-rtheast quar-er of the northwest quarter o- section thirty-three, containing forty acres.

Township ninety-five, range forty-two.

Southwest quarter of northeast quarter, east half of northwest quarter, and the southwest quarter of section seven, containing two hundred and seventy-two acres and fifty-three yundredths of an acre.

West half of the northeast quarter, west half of the southeast quarter, northeast quarter of the southwest quarter, southwest quarter of southwest quarter, and the northwest quarter of section nineteen, containing three hundred and ninety acres and six-hundredths of an acre.

Northwest quarter of northeast quarter and northwest quarter of section thirty-one, containing one hundred and ninety-three acres and seventy-six hundredths of an acre.

Township ninety-five, range forty-three.

All of section one, containing six hundred and forty acres and seventy-two hundredths of an acre.

East half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and the west half of
110 southwest quarter of section three, containing two hundred and eighty-two acres and nineteen-hundredths of an acre.

All of section five, containing six hundred and thirty-two acres and ninety-two hundredths of an acre.

All of section seven, containing six hundred and seventeen acres and sixty-eight hundredths of an acre.

North half of northeast quarter, southwest quarter of northeast quarter, north half of southwest quarter, southeast quarter of southwest quarter, south half of southeast quarter, and the northwest quarter of section nine, containing four hundred and eighty acres.

East half of section eleven, containing three hundred and twenty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and nineteen acres and sixty-eight hundredths of an acre.

East half of northwest quarter and the northeast quarter of section twenty-one, containing two hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

North half of northwest quarter, southwest quarter, and east half of section twenty-nine, containing five hundred and sixty acres.

North half of section thirty-one, containing three hundred and ten acres and fifty-six hundredths of an acre.

Township ninety-five, range forty-four.

All of section one, containing six hundred and nineteen acres and sixty-two hundredths of an acre.

All of section three, containing six hundred and twenty-three acres and seventy-four hundredths of an acre.

All of section five, containing six hundred and thirty-two acres and twenty-six hundredths of an acre.

All of section seven, containing six hundred and thirty-five acres and e-ghty-four hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and thirty-seven acres.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

North half of southeast quarter and southwest quarter of southeast quarter of section twenty-five, containing one hundred and twenty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

North half of section thirty-one, containing three hundred and twenty acres and one-hundredth of an acre.

North half of section thirty-three, containing three yhundred and twenty acres; northwest quarter of section thirty-five, -ontaining one hundred and sixty acres.

Township ninety-five, range forty-five.

All of section one, containing six hundred and thirty-eight acres and twenty-eight hundredths of an acre.

111 All of section three, containing six hundred and thirty-two acres and twenty-eight hundredths of an acre.

All of section five, containing six hundred and twenty-five acres and forty-six hundredths of an acre.

All of section seven, containing six hundred and eleven acres and twenty-four hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and seven acres and eighty-hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and three acres and sixteen-husdredths of an acre.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-five, range forty-six.

Northeast quarter of northwest quarter of section five, containing thirty-eight acres and fourteen-hundredths of an acre.

Northeast quarter of southeast quarter of section twenty-five, containing forty acres.

Northwest quarter of northeast quarter of section thirty-three, containing forty acres.

Southeast quarter of southwest quarter and west half of southeast quarter of section thirty-five, containing one hundred and twenty acres.

Township ninety-four, range forty-six.

All of section one, containing six hundred and sixty-four acres and seventy-eight hundredths of an acre.

All of section three, containing six hundred and seventy-one acres and thirty-eight hundredths of an acre.

All of section five, containing six hundred and sixty-seven acres and fifty-hundredths of an acre.

All of section seven, containing six hundred and thirteen acres and forty-four hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and twenty acres and ninety-two hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

Township ninety-four, range forty-seven.

All of section one, containing six hundred and fifty acres and ninety-six hundredths of an acre.

All of section eleven, containing six hundred and forty acres.
All of section thirteen, containing six hundred and forty acres.
All of section fifteen, containing six hundred and forty acres.
All of section twenty-three, containing six hundred and forty acres.
All of section twenty-five, containing six hundred and forty acres.
Also of section twenty-seven, containing six hundred and forty acres.

112 *Twenty-Mile Limits.*

Township eighty-nine, range forty-four.

All of section eleven, containing six hundred and forty acres.
East half of the northeast quarter and the southeast quarter of section thirteen, containing two hundred and forty acres.
Southeast quarter of southwest quarter of section twenty-three, containing forty acres.
East half of southwest quarter, southeast quarter, and north half of section twenty-five, containing five hundred and sixty acres.
Southeast quarter of northwest quarter and east half of section twenty-seven, containing three hundred and sixty acres.
Southeast quarter of southeast quarter, southwest quarter, and north half of section thirty-three, containing five hundred and twenty acres.
South half of northeast quarter, south half of northwest quarter, and south half of section thirty-five, containing four hundred and eighty acres.

Township one hundred, range thirty-seven.

Lots numbered one, two, and three and the southeast quarter of southeast quarter of section seven, containing two hundred and six acres and fifty-three hundredths of an acre.
East half of northeast quarter, northwest quarter of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, southwest quarter of southwest quarter, and the southeast quarter of section seventeen, containing four hundred and forty acres.
Southwest quarter of northeast quarter, east half of northwest quarter, east half of southwest quarter, northeast quarter of southeast quarter, and the southwest quarter of southeast quarter of section nineteen, containing two hundred and eighty acres.
Northwest quarter of northeast quarter, east half of northwest quarter, and the west half of southwest quarter of section twenty-nine, containing two hundred acres.
West half of northwest quarter, west half of southwest quarter, southeast quarter of southwest quarter, and the northeast quarter of section thirty-one, containing three hundred and fifty acres and twenty-eight hundredths of an acre.

Township one hundred, range thirty-eight.

The lots numbered one, two, three, and four, southwest quarter, north half of southeast quarter, and the southwest quarter of southeast quarter of section seven, containin- four hundred and fifty-six acres and fifty-two hundredths of an acre.

Lots numbered one, two, three, and four and the south half of section nine, containing five hundred and twenty-eight acres and four-hundredths of an acre.

Lots numbered one, two, three and the south half of section eleven, containing four hundred and eighty acres and seventy-six hundredths of an acre.

West half of northeast quarter, southeast quarter of northeast quarter, west half of southwest quarter, north half of southeast quarter, and the southwest quarter of southeast quarter of section thirteen, containing three hundred and twenty acres.

113 East half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, and the southwest quarter of section fifteen, containing four hundred and eighty acres.

West half of northeast quarter, southeast quarter of northeast quarter, north half of northwest quarter, west half of southeast quarter, and the southeast quarter of southeast quarter of section seventeen, containing three hundred and twenty acres.

North half of section twenty-one, containing three hundred and twenty acres.

East half of northwest quarter, southwest quarter of northwest quarter, east half of southwest quarter, northwest quarter of southeast quarter, and the northeast quarter of section twenty-three, containing four hundred acres.

West half of northwest quarter, west half of southeast quarter, southeast quarter of southeast quarter, and the southwest quarter of section twenty-five, containing three hundred and sixty acres.

Township one hundred, range thirty-nine.

All of section eleven, containing five hundred and fifteen acres and sixty-six hundredths of an acre.

North half of section thirteen, containing three hundred and twenty acres.

Township one hundred, range forty-two.

West half of northeast quarter, west half of southeast quarter, and the west half of section seven, containing three hundred and five acres and fifty-two hundredths of an acre.

Township one hundred, range forty-three.

All of section seven, containing three hundred and sixty eight acres and thirty-eight hundredths of an acre.

All of section nine, containing four hundred and fifteen acres and eight-six hundredths of an acre.

All of section eleven, containing four hundred and twelve acres and twenty-eight hundredths of an acre.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and seventy-two acres and four-hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing five hundred and eighty-two acres.

All of section thirty-three, containing six hundred and forty acres.

Township one hundred, range forty-four.

All of section nine, containing three hundree and sixty-five acres and sixty-four hundredths of an acre.

All of section eleven, containing four hundred and eleven
114 acres and sixteen-hundredths of an acre.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen*t*, containing six hundred and forty acres.

All of section nineteen, containing five hundred and eighty-five acres and seventy-two hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing five hundred and eighty-four acres and forty-hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township one hundred, range forty-five.

All of section thirteen, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-nine, range forty-three.

West half of section five, containing three hundred and twenty-one acres and fifteen-hundredths of an acre.

All of section seven, containing five hundred and ninety-three acres and seventy-seven hundredths of an acre.

West half of section nineteen, containing two hundred and eighty-three acres.

Township nienty-nine, range forty-four.

All of section one, containing six hundred and thirty-six acres and eighty-eight hundredth- of an acre.

All of section three, containing six hundred and thirty-four acres and twenty-six hundredths of an acre.

All of section five, containing six hundred and thirty-two acres and twenty-hundredths of an acre.

All of section seven, containing five hundred and ninety-one acres and eighty-four hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and ninety-nine acres and ninety-two hundredths of an acre.

All of section twenty-one, containing six hundred ans forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and five acres and thirty-six hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-nine, range forty-five.

All of section one, containing six hundred and twenty-nine acres and seventy-two hundredths of an acre.

115 North half of section three, containing three hundred and six acres and seventy-eight hundredths of an acre.

All of section thirteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and ninety-four acres and seventy-six hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing five hundred and ninety acres and eighty-hundredths of an acre.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-nine, range forty-six.

All of section thirteen, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-eight, range forty-four.

All of section three, containing six hundred and sixty acres and forty-hundredths of an acre.

All of section five, containing six hundred and seventy-nine acres and thirty-eight hundredths of an acre.

West half of section seven, containing two hundred and seventy-nine acres and eighty-eight hundredths of an arce.

All of section nine, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and ninety-eight acres.

Township ninety-*nine*, range forty-five.

All of section one, containing seven hundred and three acres and twenty-six hundredths of an acre.

All of section three, containing seven hundred and ten acres and fifty-hundredths of an acre.

West half of section seven, containing two hundred and seventy-one acres and sixty-hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and ninety acres and sixty-hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

West half of section thirty-one, containing two hundred and seventy-five acres and twenty-hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

Township ninety-eight, range forty-six.

All of section one, containing seven hundred and four acres and eighty-two hundredths of an acre.

All of section three, containing six hundred and ninety-
116 seven acres and eighty-four hundredths of an acre.

All of section five, containing six hundred and seventy-nine acres and fifty-four hundredths of an acre.

All of section seven, containing five hundred and thirty-nine acres and sixty-four hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and sixty-four acres and seventy-two hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

East half of section twenty-five, containing three hundred and twenty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing five hundred and ninety-three acres and seventy-six hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

East half of northeast quarter, west half of northwest quarter, and south half of section thirty-five, containing four hundred and eighty acres.

Township ninety-eight, range forty-seven.

All of section one, containing six hundred and seventy-three acres and forty-four hundredths of an acre.

All of section thirteen, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-seven, range forty-five.

All of section five, containing five hundred and ninety-five acres and fifty-two hundredths of an acre.

All of section seven, containing six hundred acres and sixty-four hundredths of an acre.

Township ninety-seven, range forty-six.

All of section one, containing five hundred and eighty-nine acres and eighty-two hundredths of an acre.

West half of southeast quarter, northeast quarter of southeast quarter, southwest quarter, and north half of section three, containing five hundred and fifty-three acres and forty-two hundredths of an acre.

All of section five, containing six hundred and eighteen acres and twenty-hundredths of an acre.

All of section seven, containing six hundred and one acres and eight-hundredths of an acre.

All of section nine, containing six hundred and forty acres.

East half of northeast quarter, southwest quarter of northeast quarter, east half of southwest quarter, and southeast quarter of section eleven, containing three hundred and sixty acres.

All of section thirteen, containing six hundred and forty acres.

Southeast quarter of northeast quarter, east half of southeast quarter, and southwest quarter of southeast quarter of section fifteen, containing one hundred and sixty acres.

North half of southeast quarter, southwest quarter, and north half of section seventeen, containing five hundred and sixty acres.

West half of northeast quarter and northwest quarter of section nineteen, containing two hundred and twenty-five acres and nine-hundredths of an acre.

117 South half of northeast quarter, south half of northwest quarter, and northwest quarter of section twenty-one, containing two hundred acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and three acres and forty-four hundredths of an acre.

All of section thirty-thre-, containing six hundred and forty acres.

Township ninety-seven, range forty-seven.

All of section one, containing six hundred and fo-ty-three acres and seventy-hundredths of an acre.

All of section three, containing six hundred and sixty-five acres and fou-teen-hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hund-ed and thirteen acres.

All of section twenty-one, containing six hundred and forty acres.

Northwest quarter of northwest quar-er and south half of southwest quarter of section twenty-five, containing one hundred and *and* twenty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and seventeen acres and sixty-hundredths of an acre.

East half of northeast quar-er, southwest quarter of northeast quarter, and southeast quarter of northwest quarter of section thirty-five, containing one hundred and sixty acres.

Township ninety-six, range forty-six.

Southeast quarter of southeast quarter of section three, containing forty acres.

Township ninety-five, range forty-three.

North half of section thirty-three, containing three hundred and twenty acres.

North half of section thirty-five, containing three hundred and twenty acres.

Township ninety-five, range forty-eight.

The lot numbered four of section one, containing forty-three acres.

Township ninety-four, range forty-seven.

All of section three, containing six hundred and fifty-five acres and sixty-two hundredths of an acre.

All of section five, containing six hundred and forty-four acres.

All of section seven, containing six hundred and forty acres and eighty-eight hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of secti-n seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and thirty-nine acres and ninety-two hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

118 The said tracts, as described in the foregoing pages, from number one to eighteen, inclusive, containing the aggregate area (191,464.04) one hundred and ninety-one thousand four hundred and sixty-four acres and four-hundredths of an acre.

Know ye that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted, and by these presents do give and grant, unto the said State of Iowa, for the use and benefit of the Sioux City and St. Paul Railroad Company of said State and it- assigns, the tracts of land selected as aforesaid and described in the foregoing:

To have and to hold the said tracts, with the appurtenances thereof, unto the said State for the use and benefit of said Sioux City and St. Paul Railroad Company and its assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this six-
[SEAL.] teenth day of October, in the year of our Lord one thou-
sand eight hundred and seventy-two, and of the Independ-
ence of the United States the ninety-seventh.

U. S. GRANT.

By the President:
S. D. WILLIAMS, *Secretary.*

C. B. BOYNTON,
Recorder of the General Land Office.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

119 EXHIBIT 12.

D.

1890 / 18644. DEPARTMENT OF THE INTERIOR, S. S. M.
GENERAL LAND OFFICE, M. J. D.
WASHINGTON, D. C., *Feb'y* 17, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of the patent issued to the State of Iowa June 17, 1873, for the Sioux City and St. Paul Railroad Company, under the act of May 12, 1864, is a true and literal exemplification from the record thereof in this office.

In testimony whereof I have hereunto subscribed my name and
[SEAL.] caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

The United States of America to all to whom these presents shall come, Greeting:

Whereas by the act of Congress approved May 12, 1864, entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," "from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select, between the Big Sioux and the west fork of the Des Moines river," every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road;

And whereas it is further enacted that "in case it shall appear that the United States have, when the line or route of said road is definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, then so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of pre-emption or homestead settlement has attached, shall be held by the State of Iowa for the uses and purposes aforesaid: Provided that the lands so selected shall

in no case be located more than twenty miles from the line of said road;"

And whereas there has been filed in this office, through the Secretary of the Interior, under dates of July 26th and August 10th, 1872, and February 10th, 1873, evidences of the completion of the first, second, third, fourth, and fifth sections of ten miles each of the Sioux City and Saint Paul railroad from the south line of the State of Minnesota southerly to a point in section sixteen, township ninety-two, range forty-five, making in all fifty continuous miles of said road;

120 And whereas the sections and parts of sections of land inuring to the State of Iowa in aid of the construction of the Sioux City and Saint Paul railroad for the said fifty miles of road have been selected and reported to this office in accordance with the act and the rules and regulations of the General Land Office, as shown by the original lists of selections dated August 1st, 1872, and February 25th, 1873, and certified under date of August 1st, 1872, and March 5th, 1873, by the register and receiver at Sioux City, Iowa, the said tracts being described as follows, to wit:

North of Base Line and West of the Fifth Principal Meridian, Iowa.

Ten-miles limits, Sioux City district.

Township one hundred, range thirty-nine.

South half of section seven, containing two hundred and eighty-three acres and twenty-two hundredths of an acre.

South half of section nine, containing two hundred and fourteen acres and ten-hundredths of an acre.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and eighty-five acres and twenty-eight hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing five hundred and five acres and thirty-seven hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

Township one hundred, range forty.

All of section seven, containing three hundred and eighty-seven acres and thirty-nine hundredths of an acre.

All of section nine, containing four hundred and forty-two acres and sixteen-hundredths of an acre.

All of section eleven, containing four hundred and seventy-nine acres and seventy-two hundredths of an acre.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and six acres and seventy-two hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and fifteen acres and twenty-hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township one hundred, range forty-one.

All of section seven, containing three hundred and eighty-four acres and fourteen-hundredths of an acre.

All of section nine, containing four hundred and seven acres and sixty-hundredths of an acre.

121 All of section eleven, containing four hundred and six acres and seventy-two hundredths of acre.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and ninety-eight acres and sixty-hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and seven acres and sixteen-hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township one hundred, range forty-two.

All of section nine, containing four hundred and ten acres and sixty-six hundredths of an acre.

All of section eleven, containing four hundred and nine acres and seventy-eight hundredths of an acre.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

East half of northeast quarter and east half of southeast quarter of section nineteen, containing one hundred and sixty acres.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

East half of northeast quarter and east half of the southeast quarter of section thirty-one, containing one hundred and sixty acres.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-nine, range thirty-nine.

All of section five, containing six hundred and eighty-two acres and four-hundredths of an acre.

All of section seven, containing five hundred and ninety-six acres and seventy-six hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing five hundred and ninety-four acres.

Township ninety-nine, range forty.

All of section one, containing six hundred and seventy-five acres and ninety-six hundredths of an acre.

All of section three, containing six hundred and sixty-seven acres and fourteen-hundredths of an acre.

All of section five, containing six hundred and fifty-six acres and thirty-four hundredths of an acre.

All of section seven, containing six hundred and eight acres and twenty-hundredths of an acre.

All of section eleven, containing six hundred and forty acres.

122 All of section seventeen, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and one acres and thirty-six hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing five hundred and ninety-five acres and fifty-two hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

Township ninety-nine, range forty-one.

All of section one, containing six hundred and forty-one acres and sixty-hundredths of an acre.

All of section three, containing six hundred and thirty-three acres and twenty-eight hundredths of an acre.

All of section five, containing six hundred and twenty-one acres and thirty-six hundredths of an acre.

All of section seven, containing six hundred and eleven acres and seventy-six hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and nineteen acres and twenty-hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and twenty-eight acres and sixty-eight hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-nie*n*, range forty-two.

All of section one, containing six hundred and nineteen acres and seventy-three hundredths of an acre.

All of section three, containing six hundred and twenty-eight acres and forty-eight hundredths of an acre.

All of section five, containing six hundred and thirty-eight acres and forty-two hundredths of an acre.

East half of northeast quarter and east half of southeast quarter of section seven, containing one hundred and sixty acres.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

East half of northeast quarter and east half of southeast quarter of section nineteen, containing one hundred and sixty acres.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

123 All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

East half of northeast quarter and east half of southeast quarter of section thirty-one, containing one hundred and sixty acres.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-eight, range forty.

All of section three, containing six hundred and forty-one acres and ninety-eight hundredths of an acre.

All of section five, containing six hundred and forty acres and ninety-eight hundredths of an acre.

All of section seven, containing six hundred and one acres and eighty-two hundredths of an acre.

All of section eleven, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and thirteen acres and sixty-hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and twenty-five acres and twenty-eight hundredths of an acre.

Township ninety-eight, ranges forty-one.

All of section one, containing six hundred and thirty-nine acres.

All of section three, containing six hundred and forty-six acres and eighty-four hundredths of an acre.

All of section five, containing six hundred and fifty-four acres and forty-two hundredths of an acre.

All of section seven, containing six hundred and twelve acres and forty-two hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and forty acres.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and thirty-five acres and twnety-six hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-eight, range forty-two.

All of section one, containing six hundred and sixty-two acres and eighteen-hundredths of an acre.

All of section three, containing six hundred and sixty-five acres and seventy-four hundredths of an acre.

All of section five, containing six hundred and sixty-nine acres and seventy-two hundredths of an acre.

East half of northeast quarter and east half of southeast quarter of section nine, containing one hundred and sixty acres.

All of section nine, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

124 All of section seventeen, containing six hundred and forty acres.

East half of the northeast quarter and east half of southeast quarter of section nineteen, containing one hundred and sixty acres.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

East half of section twenty-seven, containing three hundred and twenty acres.

North half of section twenty-nine, containing three hundred and twenty acres.

East half of northeast quarter and east half of southeast quarter of section thirty-one, containing one hundred and sixty acres.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-seven, range forty.

Southwest quarter of northwest quarter of section seven, containing thirty-six acres and fifty-hundredths of an acre.

Township ninety-seven, range forty-one.

Northwest quarte- of northeast quarter of section five, containing thirty-five acres and forty-eight hundredths of an acre.

Northeast quarter of southwest quarter of section eleven, containing forty acres.

Southwest quarter of southwest quarter of section thirteen, containing forty acres.

Northwest quarter of northwest quarter of section seventeen, containing forty acres.

Northwest quarter of southwe*ts* quarter of section nineteen, containing forty acres and seventy-one hundredths of an acre.

Northeast quarter of southeast quarter and east half of southwest quarter of section thirty-five, containing one hundred and twenty acres.

Township ninety-seven, range forty-two.

All of section one, containing six hundred and seven acres and thirty-hundredths of an acre.

All of section three, containing five hundred and ninety-five acres and sixty-hundredths of an acre.

All of section five, containing five hundred and ninety and forty-hundredths of an acre.

East half of northeast quarter and east half of southeast quarter of section seven, containing one hundred and sixty acres.

All of section nine, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

East half of northeast quarter and east half of southeast quarter of section nineteen, containing one hundred and sixty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

South half of section twenty-nine, con*at*ining three hundred and twenty acres.

East half of northeast quarter and east half of southeast quarter of section thirty-one, containing one hundred and sixty acres.

All of section thirty-three, containing six hundred and forty acres.

125 All of section thirty-five, containing six hundred and forty acres.

Township ninety-six, range forty-one.

Northeast quarter of northwest quarter of section three, containing forty acres and ten-hundredths of an acre.

Southeast quarter of northeast quarter of section fifteen, containing forty acres.

Northeast quarter of southwest quarter of section seventeen, containing forty acres.

Township ninety-six, range forty-two.

All of section one, containing six hundred forty-one acres and ninety-six hundredths of an acre.

All of section three, containing six hundred and forty-six acres and sixteen-hundredths of an acre.

All of section five, containing six hundred and fifty-four acres and ninety-four hundredths of an acre.

East half of northeast quarter and east half of southeast quarter of section seven, containing one hundred and sixty acres.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

East half of northeast quarter and east half of southeast quarter of section nineteen, containing one hundred and sixty acres.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

East half of northeast quarter and east half of southeast quarter of section thirty-one, containing one hundred and sixty acres.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-five, range forty-one.

Northeast quarter, south half of northwest quarter, and south half of section five, containing five hundred and fifty-nine acres and sixty-eight hundredths of an acre.

West half of southwest quarter, north half of southeast quarter, and north half of section seven, containing four hundred and forty-two acres.

Township ninety-five, range forty-two.

North half of northeast quarter, northwest quarter, and south half of section one, containing five hundred and sixty-one acres and thirty-six hundredths of an acre.

Northeast quarter, north half of northwest quarter, southwest quarter, and north half of southeast quarter of section three, containing four hundred and sixty-nine acres and sixty-hundredths of an acre.

Northeast quarter, north half of northwest quarter, southwest quarter, and north half of southeast quarter of section five, containing four hundred and seventy acres and eighty-two hundredths of an acre.

Southeast quarter of northeast quarter and east half of southeast quarter of section seven, containing one hundred and twenty acres.

126 All of section nine, containing six hundred and forty acres.

West half of southwest quarter, southeast quarter, and

north half of section eleven, containing five hundred and sixty acres.

East half of southeast quarter, west half of northwest quarter, northeast quarter, and southwest quarter of section fifteen, containing four hundred and eighty acres.

Northeast quarter, west half of northwest quarter, southwest quarter, and north half of southeast quarter of section seventeen, containing four hundred and eighty acres.

East half of northeast quarter and east half of southeast quarter of section nineteen, containing one hundred and sixty acres.

All of section twenty-one, containing six hundred and forty acres.

Twenty-Miles Limits.

Township one hundred, range thirty-eight.

West half of the southwest quarter and southeast quarter of southwest quarter of section seventeen, containing one hundred and twenty acres.

Northwest quarter of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, west half of the northwest quarter, east half of southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section nineteen, containing three hundred and eighty-one acres and fifty-eight hundredths of an acre.

Northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter, and northeast quarter of so-theast quarter of section twenty-seven, containing three hundred and twenty acres.

Southeast quarter of southwest quarter and south half of southeast quarter of section twenty-one, containing one hundred and twenty acres.

All of section twenty-nine, containing five hundred and seventy-eight acres and seventy-five hundredths of an acre.

All of section thirty-one, containing six hundred and nine ac-es and thirty-two hundredths of an acre.

All of section thirty-three, containing two hundred and thirty-six acres and eighty-hundredths of an acre.

North half of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, northeast quarter of southwest quarter, southwest quarter of southwest quarter and southeast quarter of section thirty-five, containing four hundred and forty acres.

Township one hundred, range thirty-nine.

South half of section thirteen, containing three hundred and twenty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township one hundred, range forty-two.

East half of northeast quarter and east half of southeast quarter of section seven, containing one hundred and two acres and twenty-six hundredths of an acre.

127 Township ninety-nine, range thirty-seven.

Southwest quarter of northeast quarter, south half of northwest quarter, and south half of section seven, containing four hundred and thirty-seven acres and sixty-four hundredths of an acre.

South half of northeast quarter, northwest quarter of northeast quarter, southwest quarter of northwest quarter, north half of southwest quarter, and southeast quarter of section nineteen, containing three hundred and eighty-six acres and twenty-six hundredths of an acre.

Township ninety-nine, range thirty-eight.

East half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, and southwest quarter of southwest quarter of section one, containing three hundred and twelve acres and eighty-five hundredths of an acre.

East half of northeast quarter, northwest quarter of northeast quarter, west half of northwest quarter, north half of southwest quarter, east half of southeast quarter, and southwest quarter of southeast quarter of section three, containing four hundred and thirty-three acres and seventy-eight hundredths of an acre.

Northeast quarter of northwest quarter, northwest quarter of northeast quarter, southwest quarter of northwest quarter, southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section five, containing four hundred and twenty-six acres and forty-hundredths of an acre.

Northeast quarter, east half of northwest quarter, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of section seven, containing five hundred and six acres and eighteen-hundredths of an acre; northeast quarter, northeast quarter of northwest quarter, and south half of northwest quarter & south half of section nine, containing six hundred acres.

Northeast quarter, north half of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of section eleven, containing four hundred and forty acres.

West half of northeast quarter, south half of northwest quarter, and south half of section thirteen, containing four hundred and eighty acres.

Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, and south half of section fifteen, containing six hundred acres.

Northwest quarter of northeast quarter, south half of northeast quarter, north half of southeast quarter, southwest quarter of southeast quarter, and the west half of section seventeen, containing five hundred and sixty acres.

Southeast quarter of southeast quarter, southwest quarter of southeast quarter, southwest quarter, and north half of section nineteen, containing five hundred and forty-two acres and twenty-six hundredths of an acre.

North half of northwest quarter, southeast quarter of northwest quarter, east half of southwest quarter, and east half of section twenty-one, containing five hundred and twenty acres.

North half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of section twenty-three, containing two hundred and eighty acres.

North half of southwest quarter, east half of southeast quarter, and north half of section twenty-five, containing four hundred and eighty acres.

128 Northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and south half of section twenty-seven, containing six hundred acres.

West half of northwest quarter, west half of southwest quarter, and southeast quarter of section twenty-nine, containing three hundred and twenty acres.

East half of northeast quarter, southwest quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, southeast quarter, and north half of southwest quarter of section thirty-one, containing four hundred and sixty-eight acres and twenty-one hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

West half of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section thirty-five, containing four hundred acres.

Township ninety-nine, range thirty-nine.

All of section one, containing six hundred and ninety-two acres and sixty-four hundredths of an acre.

All of section three, containing six hundred and eighty-nine acres and fifty-two hundredths of an acre.

All of section eleven, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing five hundred and ninety-five acres and seventy-two hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-eight, range thirty-eight.

Northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of section three, containing six hundred acres and thirty-nine hundredths of an acre.

Northwest quarter of northeast quarter, south half of northeast quarter, east half of northwest quarter, east half of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of section five, containing four hundred acres seventy-eight hundredths of an acre.

Southeast quarter of northeast quarter, south half of southeast quarter, and west half of section seven, containing four hundred and twenty-seven acres and forty-two hundredths of an acre.

Northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section nine, containing four hundred acres.

Northeast quarter, northeast quarter of northwest quarter, and south half of section eleven, containing five hundred and twenty acres.

Northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of section fifteen, containing six hundred acres.

South half of northeast quarter, northwest quarter of northwest quarter, southeast quarter of northwest quarter, east half of
129 southwest quarter, and southeast quarter of section seventeen, containing four hundred acres.

All of section nineteen, containing six hundred and thirty-six acres and sixty-eight hundredths of an acre.

Southwest quarter of northeast quarter, northwest quarter, and south half of section twenty-one, containing five hundred and twenty —.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and thirty-eight acres and seventy-six hundredths of an acre.

Township ninety-eight, range thirty-nine.

All of section one, containing six hundred and forty-three acres and sixteen-hundredths of an acre.

All of section three, containing six hundred and forty-three acres and twelve-hundredths of an acre.

Southeast quarter and north half of section five, four hundred and eighty-two acres and sixty-six hundredths of an acre.

All of section seven, containing five hundred and ninety-nine acres and thirty-two hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

West half of section nineteen, containing two hundred and eighty acres and sixty-eight hundredths of an acre.

East half of section twenty-one, containing three hundred and twenty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section thrity-one, containing six hundred and two acres and ninety-two hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

Township ninety-eight, range forty.

All of section one, containing six hundred and forty-three acres and twenty-hundredths of an acre.

North half of section thirteen, containing three hundred and twenty acres.

South half of section twenty-three, containing three hundred and twenty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-seven, range thirty-nine.

Northeast quarter of northeast quarter of section seven, containing forty acres.

Township ninety-seven, range forty.

North half of northeast quarter of section one, containing sixty-one acres and forty-four hundredths of an acre.

Southwest quarter of southwest quarter and southeast quarter of southe-st quarter of section twenty-one, containing eighty acres.

130 Northeast quarter of section twenty-five, containing one hundred and sixty acres.

Northwest quarter of northwest quarter of section thirty-five, containing forty acres.

Township ninety-seven, range forty-one.

Northwest quarter of northeast quarter of section twnety-five, containing forty acres.

Township ninety-six, range thirty-nine.

West half of southwest quarter of section seven, containing sixty-two acres and twenty-five hundredths of an acre.

Township ninety-six, range forty.

All of section one, containing five hundred and ninety-nine acres and eighty-eight hundredths of an acre.

All of section three, containing six hundred and twelve acres.

All of section five, containing six hundred and twenty-six acres and twnety-four hundredths of an acre.

All of section seven, containing six hundred and thirty acres and eight hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section eleven, containing six hundred and forty acres.

All of section thirteen, containing six hundred and forty acres.

All of section fifteen, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and thirty-six acres and forty-eight hundredt-s of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

All of section twenty-five, containing six hundred and forty acres.

All of section twenty-seven, containing six hundred and forty acres.

All of secti-n twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and forty-one acres and eighty-two hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

All of section thirty-five, containing six hundred and forty acres.

Township ninety-five, range forty.

North half of northeast quarter, west half of northwest quarter, east half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of section one, containing four hundred and four acres and four-hundredths of an acre.

East half of southeast quarter, southwest quqrter, and north half of section three, containing five hundred and ninety-five acres and twenty-eight hundredths of an acre.

South half of southeast quarter, southwest quarter, and north half of section five, containing five hundred and sixty-three acres and sixty-hundredths of an acre.

East half of southwest quarter, southeast quarter, and north half of section seven, containing five hundred and sixty-two acres and forty-nine hundredths of an acre.

All of section nine, containing six hundred and forty acres.

West ahalf of northwest quarter, northeast quarter, and south half of section eleven, containing five hundred and sixty acres.

131 North half of southwest quarter, southeast quarter, and north half of section thirteen, containing five hundred and sixty acres.

Northwest quarter of northwest quarter, southeast quarter of no-thwest quarter, southwest quarter, and east half of section fifteen, containing five hundred and sixty acres.

South half of southeast quarter, west half of southwest quarter, and north half of section seventeen, containing four hundred and eighty acres.

Northeast quarter, east half of northwest quarter, north half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of section nineteen, containing four hundred and forty-three acres.

Northeast quarter, south half of northwest quarter, and south half of secti-n twenty-one, containing five hundred and sixty acres.

Southwest quarter of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, southwest quarter, north half of southeast quarter, southwest quarter of southeast quarter, and north half of northeast quarter of section twenty-three, containing five hundred and twenty acres.

Northeast quarter, east half of northwest quarter, and south half of section twenty-seven, containing five hundred and sixty acres.

North half of southwest quarter, west half of southeast quarter, and north half of section twenty-nine, containing four hundred and eighty acres.

Township ninety-five, range forty-one.

Southwest quarter, west half of southeast quarter, and north half of section one, containing five hundred and fifty-eight acres and eighty-two hundredths of an acre.

North half of southeast quarter, south half of southwest quarter, and north half of section three, containing four hundred and eighty-one acres and forty-eight hundredths of an acre.

East half of southeast quarter, southwest quarter, and north half of section eleven, containing five hundred and sixty acres.

All of section thirteen, containing six hundred and forty acres.

East half of northwest quarter, northeast quarter, and south half of section fifteen, containing five hundred and sixty acres.

East half of southwest quarter and northwest quarter of section nineteen, containing two hundred and twenty-three acres and thirty-seven hundredths of an acre.

North half of southeast quarter, southwest quarter, and north half of section twenty-three, containing five hundred and sixty acres.

Northeast quarter, west half of northwest quarter, north half of southwest quarter, and southeast quarter of section twenty-five, containing four hundred and eighty acres.

East half of southwest quarter, southeast quarter, and north half of section twenty-seven, containing five hundred and sixty acres.

Township ninety-five, range forty-two.

North half of southwest quarter, southwest quarter of southwest quarter, north half of southeast quarter, and north half of section thirteen, containing five hundred and twenty acres.

132 East half of southwest quarter, west half of southeast quarter, and north half of section twenty-three, containing four hundred and eighty *cares*.

West half of southwest quarter, west half of southeast quarter, and north half of section twenty-*feive*, containing four hundred and eighty acres.

East half of northeast quarter, northwest quarter, and south half of section twenty-seven, containing five hundred and sixty acres.

All of section twenty-nine, containing six hundred and forty acres.

Southeast quarter of northeast quarter of section thirty-one, containing forty acres.

Township ninety-four, range forty-seven.

All of section thirty-one, containing six hundred and thirty-eight acres and forty-hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

Township ninety-three, range forty-seven.

All of section five, containing six hundred and fifty-one acres and seventy-four hundredths of an acre.

All of section seven, containing six hundred and thirty-eight acres and twelve-hundredths of an acre.

Township ninety-three, range forty-eight.

All of section one, containing six hundred and thirty-seven acres and fifteen-hundredths of an acre.

North half of northwest quarter and east half of section three, containing three hundred and ninety-three acres and three-hundredths of an acre.

Northeast quarter of southwest quarter and southeast quarter of section nine, containing two hundred acres.

South half of southwest quarter of secti-n eleven, containing eighty acres.

All of section thirteen, containing six hundred and forty acres.

East half of section fifteen, containing three hundred and twenty acres.

Lot numbered four and northeast quarter of southwest quarter of section seventeen, containing seventy-eight acres and ninety-seven hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-three, containing six hundred and forty acres.

Northeast quarter of northeast quarter and south half of section twenty-seven, containing three hundred and sixty acres.

Northeast quarter of northeast quarter of section twenty-nine, containing forty acres.

Lots numbered one and four, southeast quarter of northeast quarter, and east half of southeast quarter of section thirty-one, contain-

ing one hundred and ninety-four acres and thirty-eight hundredths of an acre.

All of section thirty-three, containing six hundred and forty acres.

Township ninety-two, range forty-eight.

All of section five, containing six hundred and nineteen acres and sixty-two hundredths of an acre.

All of section seven, containing six hundred and forty-one acres and twenty-two hundredths of an acre.

All of section nine, containing six hundred and forty acres.

Northeast quarter and south half of section seventeen, con-
133 taining four hundred and eighty acres.

Southwest quarter of northwest quarter and south half of section nineteen, containing three hundred and sixty-two acres and twenty-five hundredths of an acre.

All of section thirty-one, containing six hundred and forty-seven acres and twenty-hundredths of an acre.

Township ninety-two, range forty-nine.

Lot number one of section eleven, containing thirty-eight acres and twenty-two hundredths of an acre.

North half of southeast quarter and north half of southwest quarter of section thirteen, containing one hundred and sixty acres.

Lot number one of section fifteen, containing one acres and thirty-hundredths of an acre.

East half of southeast quarter and southwest quarter of southeast quarter of section twenty-five, containing one hundred and twenty acres.

East half of section thirty-five, containing three hundred and twenty acres.

Township ninety-one, range forty-nine.

All of section one, containing six hundred and thirty-eight acres and twenty-eight hundredths of an acre.

Northeast quarter of northeast quarter of section three, containing thirty-eight acres and sixty-hundredths of an acre.

Northeast quarter, north half of southeast quarter, and southeast quarter of southeast quarter of section eleven, containing two hundred and eighty acres.

Northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and northwest quarter of southeast quarter of section thirteen, containing three hundred and twenty acres.

Township eighty-nine, range forty-three.

All of section five, containing five hundred and ninety-six acres and sixty-four hundredths of an acre.

All of section seven, containing six hundred and seventy-two acres and eighty-eight hundredths of an acre.

All of section nine, containing six hundred and forty acres.

All of section seventeen, containing six hundred and forty acres.

All of section nineteen, containing six hundred and eighty-two acres and forty-hundredths of an acre.

All of section twenty-one, containing six hundred and forty acres.

All of section twenty-nine, containing six hundred and forty acres.

All of section thirty-one, containing six hundred and seventy-three acres and eight-hundredths of an acre.

Township eighty-eight, range forty-four.

North half of northwest quarter, south half of southeast quarter, northeast quarter of southeast quarter, and southeast quarter of northeast quarter of section five, containing two hundred and eighty-seven acres and sixty-five hundredths of an acre.

West half of northwest quarter, west half of southwest quarter, east half of southeast quarter, and southwest quarter of southeast quarter of section seven, containing two hundred and fifty-six acres and seventy-six hundredths of an acre.

134 Southwest quarter and east half of section nine, containing four hundred and eighty acres.

All of section seventeen, containing six hundred and forty acres.

West half of northwest quarter and south half of section nineteen, containing three hundred and seventy-two acres and ninety-six hundredths of an acre.

Township eighty-eight, range forty-five.

All of section one, containing seven hundred and thirty-four acres and eighty-eight hundredths of an acre.

West half of section eleven, containing three hundred and twenty acres.

Southeast quarter of section fifteen, containing one hundred and sixty acres.

West half of northwest quarter and southwest quarter of section twenty-one, containing two hundred and forty acres.

Southwest quarter, west half of northwest quarter, and northeast quarter of northwest quarter of section twenty-three, containing two hundred and eighty acres.

Northeast quarter, east half of northwest quarter, and north haof of southeast quarter of section twenty-five, containing three hundred and twenty acres.

East half of section twenty-seven, containing three hundred and twenty acres.

All of section twenty-nine, containing six hundred and forty acres.

East half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing four hundred and eighty acres.

South half of southwest quarter and northwest quarter of southwest quarter of section thirty-three, containing one hundred and twenty acres.

Southwest quarter of northeast quarter, southeast quarter, and west half of section thirty-five, containing five hundred and twenty acres.

Township ninety, range forty-three.

South half of section thirty-three, containing three hundred and twenty acres.

The said tracts, as described in the foregoing pages from two to number nineteen, inclusive, containing the aggregate area of (205,374.76) two hundred and five thousand three hundred and seventy-four acres and seventy-six hundredths of an acre.

Now, know ye that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted and by these presents do give and grant unto the said State of Iowa, for the use and benefit of the Sioux City and Saint Paul Railroad Company of said State and its assigns, the tracts of land selected as aforesaid and described in the foregoing:

To have and to hold the said tracts, with the appurtenances, unto the said State for the use and benefit of said Sioux City and Saint Paul Railroad Company and its assigns forever.

135 In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this seventeenth day of June, in the year of our Lord one thousand eight [SEAL.] hundred and seventy-three, and of the Independence of the United States the ninety-sev-nty.

By the President:

U. S. GRANT,
By S. D. WILLIAMSON, *Secretary.*

EUGENE A. FISKE,
Acting Recorder of the General Land Office ad Interim.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

EXHIBIT No. 13.

E.

1890. 18644. DEPARTMENT OF THE INTERIOR, S. S. M.
GENERAL LAND OFFICE, W. J. D.
WASHINGTON, D. C., *Feb'y* 17, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of the patent issued to the State of Iowa January 25th, 1875, for the Sioux City and St. Paul Railroad Company under the act of Congress approved May 12, 1864, is a true and literal exemplification from the record thereof in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of [SEAL.] Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

136 No. 3.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas by the act of Congress approved May 12, 1864, entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select, between the Big Sioux river and west fork of the Des Moines river, every alternate section of land, designated by odd numbers, for ten sections in width on each side of said *raod*;"

And whereas it is further enacted that "in case it shall appear that the United States have, when the line or ro-te of said road is definitely located, sold any section or any portion thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, then so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached shall be held by the State of Iowa for the uses and purposes aforesaid: Provided that the lands so selected shall in no case be located more than twenty miles from the line of said road;"

And whereas there has been filed in this office, through the Secretary of the Interior, under dates of *Jluy* 26th and Aug. 10th, 1872, and February 10, 1873, evidences of the completion of the first, second, third, fourth, and fifth sections of ten miles each of Sioux City and Saint Paul railroad from the south line of the State of Minnesota southerly to a point in section sixteen, township ninety-two, range forty-five, making in all fifty continuous miles of said *raod*;

And whereas the sections and parts of sections of land inuring to the State of Iowa in aid of the construction of the Sioux City and Saint Paul railroad for the said fifty miles of road have been selected and reported to this office in accordance with the act and the rules and regulations of the General Land Office, as shown by the original lists of selections, dated August 1st, 1872, June 18, 1873, and October 29th, 1874, and certified under date of Aug. 1st, 1872, June 18th, 1873, and Oct. 29th, 1874, by the register and recorder at Sioux City, Iowa, the said tract being described as follows, to wit:

North of Base Line and West of the Fifth Principal Meridian, Iowa.

Ten-miles limits.

Township ninety-five, range forty-six.

Northeast quarter of section twenty-seven, containing one hundred and sixty acres.

Township ninety-eight, range forty.

South half of section nine, containing one hundred and twenty acres.

Township ninety-six, range forty-five.

Southeast quarter of southeast quarter of section thirty-one, containing forty acres.

137 *Twenty-Mile Limits.*

Township ninety-nine, range thirty-seven.

Northeast quarter of northwest quarter of section seven, containing forty acres.

Northwest quarter of northwest quarter, southeast quarter of northwest quarter, and south half of southwest quarter of section nineteen, containing one hundred and fifty-one acres and sixty-one hundredths of an acre.

Township one hundred, range thirty-seven.

North half of southeast quarter, southwest quarter of southeast quarter, west half of southwest quarter, and northeast quarter of southwest quarter of section seven, containing two hundred and fourteen acres and sixty-six hundredths of an acre.

West half of northwest quarter of section nineteen, containing sixty-two acres and eleven-hundredths of an acre.

South half of northeast quarter, west half of northwest quarter, southeast quarter, and east half of southwest quarter of section twenty-nine, containing four hundred acres.

East half of northwest quarter, southeast quarter, and northeast quarter of southwest quarter of section thirty-one, containing two hundred and eighty acres.

Township ninety-eight, range thirty-eight.

Northwest quarter of northwest quarter of section three, containing forty acres and eleven-hundredths of an acre.

Northeast quarter of northeast quarter, west half of northwest quarter, northwest quarter of southeast quarter, and west half of southwest quarter of section five, containing two hundred and forty acres and seventy-eight hundredths of an acre.

Northwest quarter of southeast quarter of section seven, containing forty acres.

Southwest quarter of northwest quarter, northeast quarter of southeast quarter, and southwest quarter of section nine, containing two hundred and forty acres.

West half of northwest quarter and southeast quarter of northwest quarter of section eleven, containing one hundred and twenty acres.

Northeast quarter of northwest quarter of section fifteen, containing forty acres.

North half of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, and west half of southwest quarter of section seventeen, containing two hundred and forty acres.

Township ninety-nine, range thirty-eight.

Northwest quarter of northeast quarter, southeast quarter of northwest quarter, southeast quarter, north half of southwest quarter, and southeast quarter of southwest quarter of section one, containing three hundred and thirty acres and ninety-three hundredths of an acre.

Southwest quarter of northeast quarter of section three, containing forty acres.

Southeast quarter of northeast quarter, northwest quarter of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southeast quarter of section five, containing one hundred and seventy-three acres and seventeen-hundredths of an acre.

138 West half of northwest quarter and southeast quarter of southeast quarter of section seven, containing one hundred and six acres and fifty-four hundredths of an acre.

Northwest quarter of northwest quarter of section nine, containing forty acres.

North half of southeast quarter of section eleven, containing eighty acres.

East half of northeast quarter and northeast quarter of northwest quarter of section thirteen, containing one hundred and twenty acres.

Northwest quarter of northwest quarter of section fifteen, containing forty acres.

Northeast quarter of northeast quarter and southeast quarter of southeast quarter of section seventeen, containing eighty acres.

North half of southeast quarter of section nineteen, containing eighty acres.

Southwest quarter of northwest quarter and northwest quarter of southwest quarter of section twenty-one, containing eighty acres.

Southeast quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, north half of southeast quarter, southeast quarter of southeast quarter, and southeast quarter of southwest quarter of section twenty-three, containing three hundred and twenty acres.

West half of southeast quarter and south half of southwest quarter of section twenty-five, containing one hundred and sixty acres.

Northeast quarter of northwest quarter of section twenty-seven, containing forty acres.

Southeast quarter of northeast quarter and northwest quarter of northeast quarter of section twenty-nine, containing eighty acres.

Northeast quarter of nort-west quarter and northwest quarter of northeast quarter of section thirty-one, containing eighty acres.

East half or northeast quarter and southwest quarter of south-

west quarter of section thirty-five, containing one hundred and wenty acres.

Township one hundred, range thirty-eight.

Southeast quarter of southeast quarter of section seven, con taining forty acres.

Lot numbered four of section eleven, containing fifty-three acres and forty-eight hundredths of an acre.

Northeast quarter of northeast quarter, northwest quarter, east half of southwest quarter, northwest quarter, east half of southwest quarter, and southeast quarter of southeast quarter of section thirteen, containing three hundred and twenty acres.

Northwest quarter of northeast quarter, southeast quarter of northwest quarter, and northwest quarter of southeast quarter of section fifteen, containing one hundred and twenty acres.

Northeast quarter of northeast quarter, south half of northwest quarter, northeast quarter of southeast quarter, and northeast quarter of southwest quarter of section seventeen, containing two hundred acres.

Northeast quarter of northeast quarter, southwest quarter of northeast quarter, northeast quarter of southeast quarter, and west half of southwest quarter of section nineteen, containing one hundred and eighty-four acres and seventy-four hundredths of an acre.

139 North half of southeast quarter, north half of southwest quarter, and southwest quarter of southwest quarter of section twenty-one, containing two hundred acres.

East half of southeast quarter, southwest quarter of southeast quarter, and northwest quarter of southwest quarter of section twenty-three, containing one hundred and sixty acres.

Northeast quarter of southeast quarter, east half of northeast quarter, southwest quarter of northeast quarter, and southeast quarter of northwest quarter of section twenty-five, containing two hundred acres.

Southwest quarter of northwest quarter, southeast quarter of southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section twenty-seven, containing two hundred acres.

South half of northeast quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of section thirty-five, containing one hundred and sixty acres.

Township ninety-five, range forty.

South half of northeast quarter, east half of northwest quarter, southeast quarter of southeast quarter, and west half of southwest quarter of section one, containing two hundred and ninety-four acres and eighteen-hundredths of an acre.

West half of southeast quarter of section three, containing eighty acres.

North half of southeast quarter of section five, containing eighty acres.

West half of southwest quarter of section seven, containing eighty-two acres and sixty-nine hundredths of an acre.

East half of northwest quarter of section eleven, containing eighty acres.

South half of southwest quarter of section thirteen, containing eighty acres.

Northeast quarter of northwest quarter and southwest quarter of northwest quarter of section fifteen, containing eighty acres.

East half of southwest quarter and north half of southeast quarter of section seventeen, containing one hundred and sixty acres.

West half of northwest quarter, south half of southwest quarter, and southeast quarter of southeast quarter of section nineteen, containing two hundred and five acres and twenty-five hundredths of an acre.

North half of northwest quarter of section twenty-one, containing eighty acres.

Southeast quarter of southeast quarter, southeast quarter of northeast quarter, and southwest quarter of northwest quarter of section twenty-three, containing one hundred and twenty acres.

West half of northwest quarter of section twenty-seven, containing eighty acres.

South half of southwest quarter and east half of southeast quarter of section twenty-nine, containing one hundred and sixty acres.

Township ninety-five, range forty-one.

East half of southeast quarter of section one, containing eighty acres.

North half of southwest quarter and south half of southeast quarter of section three, containing one hundred and sixty acres.

North half of northwest quarter of section five, containing seventy-eight acres and sixty-four hundredths of an acre.

East half of southwest quarter and south half of southeast quarter of section seven, containing one hundred and sixty acres.

140 West half of southeast quarter of section eleven, containing eighty acres.

West half of northwest quarter of section fifteen, containing eighty acres.

West half of southwest quarter of section nineteen, containing sixty-five acres and thirty-nine hundredths of an acre.

South half of southeast quarter of section twenty-three, containing eighty acres.

East half of northwest quarter and south half of southwest quarter of section twenty-five, containing one hundred and sixty acres.

West half of southwest quarter of section twenty-seven, containing eighty acres.

Township ninety-five, range forty-two.

South half of northeast quarter of section one, containing eighty acres.

South half of northwest quarter and south half of southeast quarter of section three, containing one hundred and sixty acres.

South half of northwest quarter and east half of southeast quarter of section five, containing one hundred and sixty acres.

West half o- northwest quar-er, north half of northeast quarter, and west half of southeast quarter of section seven, containing two hundred and thirty acres and forty one-hundredths of an acre.

East half of southwest quarter of section eleven, containing eighty acres.

Southeast quarter of southwest quarter and south half of southeast quarter of section thirteen, containing one hundred and twenty acres.

West half of southeast quarter and east half of northwest quarter of section fifteen, containing one hundred and sixty acres.

East half of northwest quarter and south half of southeast quarter of section seventeen, containing one hundred and sixty acree.

Northwest quarter of southwest quarter and southeast quarter of southwest quarter of section nineteen, containing seventy-six acres and sev-nty-two hundredths of an acre.

West half of southwest quarter and east half of southeast quarter of section twenty-three, contai'ning one hundred and sixty acres.

East half of southwest quarter and east half of s-utheast quarter of section twenty-five, containing one hundred and sixty acres.

West half of northeast quarter of section twenty-seven, containing eighty acres.

Northeast quarter of northeast quarter of section thirty-one, containing forty acres.

Township ninety-nine, range thirty-eight.

Northwest quarter of southeast quarter of section three, containing forty acres.

Township ninety-six, range forty-one.

East half of northwest quarter of section seven, containing eighty acres.

Township ninety-three, range forty-eight.

Southeast quarter of northwest quarter of sec-ion nine, containing forty acres.

141 Township ninety-one, -ange forty-nine.

Southeast quarter of northeast quarter of section three, containing forty acres.

The said tracts, as described in the foregoing pages from number two to number six, inclusive, containing the aggregate area of ten thousand nine hundred and eleven acres and forty-one hundredths of an acre (10,911.41).

Now, know ye that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted and by these presents do give and grant unto the said

State of Iowa, for the use and benefit of the Sioux City and Saint Paul Railroad Company of said State and its assigns, the tracts of land selected as aforesaid and described in the foregoing:

To have and to hold the said tracts, with the appurtenances, unto the said State for the use and benefit of said Sioux City and Saint Paul Railroad Company and its assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

By the President:

U. S. GRANT,
By S. D. WILLIAMSON, *Secretary.*

L. K. LIPPINCOTT,
Recorder of the General Land Office.

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk; J. H. Bolton, deputy.

142 EXHIBIT 14.

F.

1890. T 5644

DEPARTMENT OF THE INTERIOR, S. S. M.
WASHINGTON, D. C., *Feb.* 17, 1890. M. J. D.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of the patent issued to the State of Iowa June 14th, 1877, for the Sioux City and Saint Paul Railroad Company, under the act of Congress approved May 12th, 1864, is a true and literal exemplification from the record thereof in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of Gen. Land Office.

No. 4.

The United States of America to all to whom these presents shall come, Greeting:

Whereas by act of Congress approved June 22d, 1874, it is provided that in the adjustment of all railroad land grants, "when made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the Land Office, the right of

said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be enti-led to select an equal *gauntity* of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated *ot* the date of selection, to which they shall receive title the same as though originally granted;"

And wher-as by the act of Congress approved May 12th, 1864, a grant of land is made to the State of Iowa to aid in the "construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines rivers, and known as the Sioux City and St. Paul railroad;"

And whereas certain tract*d* of land embraced in an odd-numbere*e* section gran-ed as aforesaid to the S-at*et fo* Iowa for the purpose aforesaid have been found to *ne* in the possession of an actual settler whose entry had been allowed under the homestead law subsequent to the time at which the right of the road is declared to have attached to such land;

143 And whereas the said Sioux City and Saint Paul Railroad Company has duly relinquished under the provisions of the said act of June 22, 1874, all its right, title, and interest in and to said tracts of land, and has selected as provided in said act of June 22, 1874, in lieu of the tracts of land thus relinquished;

And whereas a certain tract of land has been selected by Edward Berrean, the land agent for the said Sioux City and Saint Paul Railroad Company, as shown by his original list of selection, dated August 30, 1876, and certified under date of November 2nd, 1876, by the register and receiver at Sioux City, Iowa, the said tract being described as follows, to wit:

North of base line and west of fifth principal meridian, Iowa.

Northeast quarter of section twenty-eight, township one hundred, range forty, containing one hundred and sixty acres:

Now, know ye that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted, and by these presents do give and grant, unto the said State of Iowa, for the use and benefit of the Sioux City and Saint Paul Railroad Company of said State and its assigns, the tract of land selected as aforesaid and described in the foregoing:

To have and to hold the said tract, with the appurtenances, unto the said State for the use and benefit of said Sioux City and Saint Paul Railroad Company and its assigns forever.

In testimony whereof I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this fourth day

of June, in the year of our Lord one thousand — and sev-
[SEAL.] enty-seven, and of the Independence of the United States the one hundred and first.

By the President:

R. B. HAYES,
By B. L. LANG,
Assistant Secretary.

S. W. CLARK,
Recorder of the General Land Office.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

144 EXHIBIT 15.

An act authorizing and directing the governor to certify to the Sioux City and St. Paul Railroad Company certain lands named therein.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That the governor of the State of Iowa be, and is hereby, authorized and directed to certify to the Sioux City and St. Paul Railroad Company any and all lands which are now held by the State of Iowa in trust for the benefit of said railroad company in accordance with the provisions of section 2 of chapter 144 of the Laws of the Eleventh General Assembly.

SECTION 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SECTION 3. This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and the State Journal, newspapers published at Des Moines, Iowa.

Approved March 13th, 1874.

I hereby certify that the foregoing act was published at Des Moines in the Daily State Journal March 19 and in the Daily State Register March 21, 1874.

JOSIAH T. YOUNG,
Secretary of State.

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

EXHIBIT 16.

Circuit Court of the United States for the District of Iowa. In Equity.

To the judge of the circuit court of the United States for the district of Iowa:

The Chicago, Milwaukee and St. Paul Railway Company of Wisconsin, a corporation duly organized under and by virtue of the laws of the State of Wisconsin and a citizen of said State, having

its principal place of business at the city of Milwaukee, in the State of Wisconsin, brings this its bill against the Sioux City and St. Paul Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Iowa and a citizen of the State of Iowa, and Alexander H. Rice, of Massachusets and a citizen of the State of Massachusetts, and Elias F. Drake, of Minnesota and a citizen of the State of Minnesota, and John H. Gear, governor of the State of Iowa, and James K. Powers, register of the State land office of the State of Iowa and a citizen of the State of Iowa; and thereupon your orator complains and says—

That the Congress of the United States, by an act entitled "An act for the granting of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12, 1864, granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the State of Iowa might select between the Big Sioux river and the west fork of the Des Moines rivers, and also granted to said State, for the use and benefit of the McGregor Western Railway Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, in South McGregor, in said State, in a westerly direction by the most proper route on or near the forty-third parallel of north latitude until it shall intersect said road running from Sioux City to the State line in the county of O'Brien, in said State, every alternate section of land, designated by odd numbers, for odd sections in width on each side of said roads; but said act provided that in case it should appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement should have been attached to the same or that the same should have been reserved by the United States for any purpose whatever, then it should be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid from the public lands aforesaid, as near as possible to the tier of sections above specified, so much land in alternate sections or parts of sections designated by odd numbers as shall be equal to such lands as the United States shall have sold, reserved, or otherwise appropriated or to which the right of homestead settlement or pre-emption should have attached as aforesaid; which lands thus indicated by odd-numbered sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid: Provided that the lands so selected should in no case be located more than twenty miles from the lines of said roads, a copy of which said act is hereto attached as "Exhibit No. 1" and to which exhibit and to all other exhibits hereunto attached your orator prays leave to refer and make a part of this bill of complaint the same as if the said exhibits were fully set forth in the body thereof.

That the legislature of the State of Iowa, by an act entitled "An act to accept the grant of lands to the State of Iowa made by act of

Congress May 12th, 1864," and to carry out the provisions of said act entitled "An act for the granting of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved April 20th, 1866, accepted the grant of land so made by Congress, a copy of which statute is hereunto annexed and marked Exhibit No. 2, and that said last act was afterwards amended by an act approved on the 24th day of March, 1868, by correcting a clerical error therein, which last-named act is hereto attached as Exhibit No. 3.

That the legislature of the State of Iowa, by an act entitled "An act to resum- all the lands and rights conferred upon the McGregor Western Railway Company by or under t-e act of Congress approved May 12th, 1864," approved February 27th, 1868, provided—

That all lands and all rights to said lands granted or intended to be granted to the McGregor Western Railway Company by the said act of Congress be, and the same thereby were, absolutely and entirely resumed by the State of Iowa, and that they be as fully and as absolutely vested in said State as if the same had never been granted to the said railway company, which last act is hereto attached as " Exhibit No. 4."

That the legislature of the State of Iowa, by an act entitled "An act making a grant of lands — the McGregor and Sioux City Railway Company," or in case of their failure to accept the same to the forty-third parallel — company, and to execute the trust conferred by an act of Congress entitled "An act for the granting of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, approved May 12, 1864," approved March 31st, 1868, granted all the rights and privileges in the land so granted to the State of Iowa to the McGregor and Sioux City Railway Company on certain conditions therein named, a copy of which act is hereunto annexed and marked " Exhibit No. 5."

That on the 28th day of April, 1868, the McGregor Western Railway Company executed and delivered to the McGregor and Sioux City Railway Company an instrument in writing whereby it absolutely, legally, and effectually waived, released, and surrendered all claim, right, or interest or pretended claim, right, or interest of the McGregor Western Railway Company to its successors or assigns in or to any of said lands grante- to the State of Iowa by an act of Congress approved March 12th, 1864, which claim, right, or interest might arise out of or on accou-t of any railroad theretofore constructed by the said McGregor Western Railway Company, a copy of which is hereto annexed, marked " Exhibit No. 6."

That the said McGregor and Sioux City Railway Company within sixty days after the passage of said act, approved March 31st, 1868 (Exhibit No. 5), filed in the office of the secretary of the State of Iowa a written acceptance of said act, as therein required to do, and at the same time filed therewith the aforesaid release and waiver made by the McGregor Western Railway Company and herein set forth as Exhibit No. 6, in compliance with section 9 of said act of 1868, herein set forth as Exhibit No. 5, a copy of which acceptance is hereunto annexed and marked " Exhibit No. 7."

That on the first day of November, 1869, the McGregor and Sioux City Railway Company changed its name to the "McGregor and Missouri River Railway Company," and from and after that
147 time was known and called by said latter name.

That on or about the 19th day of August, A. D. 1864, the McGregor Western Railway Company located its line of railroad from McGregor, in Clayton county, Iowa, to Calmar, in the county of Winneshiek, in said State, and thence westward and through the counties of Chickasaw, Floyd, Cerro Gordo, Hancock, Kossuth, Palo Alto, Clay, and O'Brien, in said State of Iowa, to a point in O'Brien county, in section 19, township 95 north, of range 40 west, which point, for the reason hereinafter stated, it is believed, would be the point of intersection referred to in the act of Congress aforesaid, and a map of their said location was filed in the General Land Office of the United States on the 30th day of August, A. D. 1864, and on the 12th day of the following September all the lands designated by odd-numbered sections within twenty miles of either side of said line not sold or reserved were withdrawn from market and selected by the proper official authorities, and the line of said location is shown on the annexed diagram or map by a line marked McGregor Western railway line of 1861, which said map is hereunto annexed and marked "Exhibit No. 8."

That the Land Department of the United States, in its annual reports and otherwise for the years 1865 and 1866, and partially in 1867, issued and published a map of Iowa entitled "Diagram of public lands in Iowa," on which the line of railroad with which the McGregor Company were required to intersect in O'Brien county is shown in nearly a straight line from Sioux City to the Minnesota State line in range 34, crossing O'Brien county diagonally from the southwest to the northeast corner, which said publications were known to the defendant The Sioux City and St. Paul Railroad Company and treated by the officers of said company before and after their pretended location in 1867 as a probable route of their railroad; which said line is designated on the annexed diagram or plat (Exhibit No. 8) as "Sioux City and St. Paul railroad proposed route."

That on the 2d day of April, 1867, the defendants The Sioux City and St. Paul Railroad Company located its line of road from the south line of the State of Minnesota, in range 40, southward to Le Mars, in the county of Plymouth, in the State of Iowa, in township 92, range 45, the said line barely crossing the northwest corner of O'Brien county, in said State of Iowa, and within three miles of said northwest corner, and that the westerly point thereof was ten miles north and twelve miles west of section 19, township 95, range 40 west, and the defendant The Sioux City and St. Paul Railroad Company filed a map of said location in the General Land Office of the United States on the 17th day of July, 1867; which said line is designated on the annexed diagram or plat (Exhibit No. 8) as "Sioux City and St. Paul railroad line of 1867."

That on the 13th day of May, 1868, the Commissioner of the General Land Office of the United States, because this location of

The Sioux City and St. Paul Railroad Company, defendant, of 1867 and the location of the McGregor Western Railway Company of 1864 did not intersect in the county of O'Brien, as required by the act of Congress aforesaid, required the said McGregor and Sioux City Railway Company by peremptory order to relocate their line through the counties of Clay and O'Brien to the point of intersection with the Sioux City and St. Paul line in the county of O'Brien, and that such relocation was made by the said McGregor and Sioux City Railway Company in pursuance thereof, and which said line is designated on the annexed plat or diagram (Exhibit No. 8) as "Relocated line of McGregor and Missouri River Railway Company," and early in the year 1869 the McGregor and Missouri River Railway Company filed with the Secretary of the Interior, in
148 the General Land Office, a map of said relocation.

That the State of Iowa has never selected and, as your orator believes, has never been requested to select any point on the south line of the State of Minnesota between the Big Sioux and the west fork of the Des Moines river as the terminal point of the line of railroad from Sioux City to such point, as prescribed in the said act of Congress (Exhibit No. 1).

That at the close of the year 1865 the McGregor Western Railway Company had completed, in full compliance with the act of Congress aforesaid, a line of first-class railroad and were operating the same from McGregor, Iowa, to Calmar, in Winneshiek county, Iowa, a distance of 42 miles, and that afterwards and in the years 1868, 1869, 1870 the McGregor and Missouri River Railway Company completed, in full compliance with the act of Congress aforesaid, a line of first-class railroad from Calmar, in Winneshiek county, to Algona, in Kossuth county, Iowa, a distance of one hundred and thirty miles, making in all a distance of one hundred and seventy-two miles of railroad completed in compliance with the acts of the legislature of the State of Iowa aforesaid.

That on the 13th day of November, 1865, William M. Stone, then governor of the State of Iowa, made his certificate, in pursuance of said act of Congress (Exhibit No. 1), to the Secretary of the Interior of the United States that the said McGregor Western Railway Company had completed forty miles of said railroad, in compliance with the terms of said act, and that prior to the first day of November, 1870, Samuel Merrill, then governor of the State of Iowa, made his certificate to the Secretary of the Interior of the United States that the said McGregor and Missouri River Railway Company or those to whose rights it had succeeded had completed in good, substantial, and workmanlike manner, as first-class railroad, one hundred and seventy-two miles of its line west of McGregor aforesaid to Algona aforesaid, in full compliance with law; that the defendant The Sioux City and St. Paul Railroad Company have never constructed any railroad whatever from Sioux City, Iowa, to any point on the south line of the State of Minnesota, but, on the contrary, about the year 1872 it commenced the construction of a railroad on the Minnesota State line, in range 41 west, and completed the first section of ten miles southward from said State line about

the 15th day of June, 1872, and on or about the 25th day of September, 1872, it completed its road southward as far as Le Mars, but upon a line varying widely from its located line before mentioned, which line is designated on the annexed plat "Sioux City and St. Paul railroad as completed," and from the village of Le Mars aforesaid to Sioux City it constructed no road whatever, but, as your orator is informed and believes and so states the fact to be, procured from another company the right for ten years from and after the year 1872 to run its cars on the railroad already completed between the two points last mentioned by the Iowa Falls and Sioux City Railway Company by the aid of a certain other congressional land grant approved May 15, 1866.

That the length of the present line of the Sioux City and St. Paul railroad now constructed from the south line of the State of Minnesota aforesaid to Le Mars is 56¼ miles or thereabouts, which is all the road ever constructed by the said company in Iowa.

That the length of the line between Le Mars and Sioux City, over which the Sioux City and St. Paul Railroad Company runs its cars over the track of another company, is twenty-four miles.

That at the date of the congressional grant aforesaid the Government lands designated by odd-numbered sections within twenty miles of either side of the line from McGregor westward and
149 east of the east line of Kossuth county, Iowa, has all been sold, reserved, or otherwise appropriated by the United States, with a few important exceptions.

That west of the east line of Kossuth county, Iowa, and thence west within twenty miles on either side of the line located by the McGregor and Missouri River Railway Company large quantities of the Government lands, designated by odd-numbered sections, has been sold, reserved, or otherwise appropriated by the United States prior to the taking effect of said congressional grant, so that under the same there could be found that enured to the McGregor grant within both the ten-mile and twenty-mile limits only about four hundred and seventy-five sections, or three hundred and four thousand acres, exclusive of the lands in controversy in this suit, owing to the said prior sales, reservations, and appropriations, and including the land in controversy. There is left to inure to the McGregor road, under it- whole grant aforesaid, only about 760 sections, or 486,000 acres.

That the McGregor and Missouri River Railway Company failed to construct a road from Algona to the point of junction with the Sioux City and St. Paul railroad, in the county of O'Brien, a distance of about 85 miles, as provided by the act of the legislature of the State of Iowa conferring the land grant upon that company, approved March 31, 1868, and neither it or any other railroad company ever constructed any road under the aforesaid act of Congress other than has been herein set out, and that in consequence of such failure the legislature, by an act entitled "An act relating to the lands heretofore granted to the McGregor and Missouri River Railway Company, resuming said lands and regranting the same upon new conditions to said company and providing for the forfeiture thereof, and in case of such forfeiture for the disposition to be made of said lands," ap-

proved March 15th, 1876, which is hereto annexed as Exhibit No. 9, enacted—

"That whereas the McGregor and Sioux City Railway Company, now known as the McGregor and Missouri River Railway Company, has failed to comply with the conditions and provisions of the acts of the 12th General Assmebly of the State of Iowa, approved March 31st, 1868, entitled 'An act making a grant of land to the McGregor and Sioux City Railway Company:'

Now, therefore, all lands ar rights to lands, saving and excepting all those tracts and parcels lying within twenty miles on either side of the located or constructed line of the Sioux City and St. Paul Railroad Company, and within what is known as the overlapping limits heretofore granted or inte-ded to be granted to the McGregor and Sioux City Railway Company, be, and the same are hereby, absolutely and entirely resumed by the State of Iowa."

And further enacted that the said lands so resumed should be re-granted to the said McGregor and Missouri River Railway Company upon certain terms and conditions therein specified, which said act was not accepted by the said McGregor and Missouri River Railway Company or by any other company, and no road was ever built or action taked under the same.

That the legislature of the State of Iowa, by an act entitled "An act in relation to the lands granted to the State of Iowa by a- act of Congress entitled 'An act for the granting of lands to the State of Iowa. in alternate sections, to aid in the construction of a railroad in said State, approved May 12th, 1864, and to grant and impose upon the Chicago, Milwaukee and St. Paul Railway Company the powers and liabilities mentioned in chapter four (4), title (10), of the Code,' approved February 27th, 1878," a copy of which is hereto attached as "Exhibit No. 10," recited that—

150 "Whereas the McGregor and Sioux City Railway Company, now known as the McGregor and Missouri River Railway Company, has failed to comply with the provisions of the act of the 12th General Assembly of the State of Iowa, approved March 31st, 1868, entitled "An act making a grant of lands to the McGregor and Sioux City Railway Company:"

Therefore the said legislature enacted that—

All lands or rights to lands theretofore granted to the McGregor and Sioux City Railway Company be, and the same were thereby, absolutely and entirely resumed to the State of Iowa.

And further enacted that—

All lands and rights to lands, whether in severalty, jointly, or in common, and including all lands or rights to lands or any interest therein or claims thereto, whether certified or not, embraced within the overlapping or conflicting limits of the two grants of roads made and described by the act of Congress thereinafter designated, granted to the State of Iowa to aid in the construction of a railroad from a point at or near the foot of Main street, in south McGregor, in said State, in a westerly direction by the most practicable route on or near the 43rd parallel of north latitude, until it should intersect in the county of O'Brien the railroad running from Sioux City, in the State

of Iowa, to the Minnesota State line, by an act of Congress approved May 12, 1864, and entitled "An act for the granting of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," be, and the same were thereby, granted and conferred upon your orator, The Chicago, Milwaukee and St. Paul Railway Company, upon certain conditions therein set forth.

That your orator accepted the said grant by giving bond and filing its acceptance with the secretary of state for the State of Iowa within the time prescribed, which bond was duly approved by the governor of the State of Iowa, and that your orator, during the year 1878, completed, constructed, and built the railroad from Algona aforesaid to the said point of junction with the Sioux City and St. Paul railroad in O'Brien county, at Sheldon, and fully complied with the terms and conditions of said act in completing a first-class railroad between said points, which was duly accepted.

That prior to the first day of January, A. D. 1879, the governor of the State of Iowa certified to the Secretary of the Interior of the United States that your orator had before that time completed its said railroad from Algona, in Kossuth county, Iowa, to Sheldon, in O'Brien county, Iowa, a distance of 85 miles, in good, substantial, and workmanlike manner as a first-class railroad and in full compliance with the last-mentioned act of the legislature of the State of Iowa and with the act of Congress aforesaid, approved May 12th, 1864, whereby your orator became entitled to demand and receive from the governor of the State of Iowa and the register of its State land office a patent for all the lands inuring to the road from a point at or near the foot of Main street, South McGregor, in said State, in a westerly *f*irection by the most practicable route on or near the 43rd parallel of north latitude to the point of intersection in O'Brien county with the railroad running from Sioux City to the State line, under the act of Congress aforesaid, which had not been previously patented to the McGregor and Missouri River Railway Company.

That on the 9th day of June, A. D. 1873, the Commissioner of the General Land Office of the United States, disregarding the rights of the State of Iowa and the rights inuring to the McGregor railroad, wrongfully, unlawfully, and mistakenly certified to the Secretary of the Interior of the United States as lands inuring to
151 the State of Iowa in aid of the construction of the said Sioux City and St. Paul railroad, and recommending that the same be approved and carried into patent, a list of lands, which *are* hereto annexed and marked "Exhibit No. 11."

That on the 10th day of June, 1873, the Secretary of the Interior of the United States, disregarding the right*x* aforesaid, wrongfully, unlawfully, and mistakenly approved said list and certificate of recommendation, and in pursuance thereof, on the 17th day of June, 1873, a patent from the United States was wrongfully, unlawfully, and mistakenly executed and issued to the State of Iowa for all of the aforesaid lands for the use and benefit of the Sioux City and St. Paul Railroad Company.

That on the 25th day of January, 1875, by the same wrong and

mistake, by the same officers of the United States, an additional list of lands was wrongfully, unlawfully, and mistakenly patented to the State of Iowa for the use and benefit of the Sioux City and St. Paul Railroad Company in the same manner; which list of lands is hereto annexed and marked "Exhibit No. 12."

That on or about the 31st day of September, 1877, the governor and register of the State land office of the State of Iowa certified to the defendant The Sioux City and St. Paul Railroad Company wrongfully, inlawfully, and mistakenly as inuring to the said company under the act of Congress approved May 12, 1864, the list of lands which is hereto annexed and marked "Exhibit No. 13."

That all the lands described in the three last exhibites are situated in the State of Iowa, in the countied of Dickinson, Osceola, and O'Brien, and are situated within twenty miles of one side or the other of your orator's line of road, which has been approved by the proper legal authorities, and also lie within twenty miles on one side or the other — line of the defendant's The Sioux City & St. Paul Railroad Company's, road, and are claimed by both companies under the grant aforesaid.

That the defendants John H. Gear, governor of the State of Iowa, and James K. Powers, register of the State — office of the State of Iowa, wrongfully, unlawfully, and mistakenly refused to issue your orator patents for or in any other manner to convey to your orator any of the said lands embraced in the three lists or exhibits last referred to; that on or about the 1st day of August, 1871, the defendant The Sioux City and St. Paul Railroad Company made and executed to the defendants Alexander H. Rice and Elias F. Drake, trustees for the holders of the bonds hereinafter mentioned, a mortgage of all the lands granted by Congress by the act approved May 12th, 1864, lying and being in the State of Iowa that might thereafter be patented or transferred by the United States or the State of Iowa to the said Sioux City and St. Paul Railroad Company or to which the said company might acquire title by reason of said grant to secure the payment of bonds to the amount of two millions eight hundred thousand dollars to be issued by said company, bearing semi-annual interest at the rate of four per cent.

That your orator is informed and believes that the said defendants, Alexander H. Rice and Elias F. Drake, claim an interest in or lien upon the land hereinbefore described by virtue of said mortgage.

Your orator further shows that the said Sioux City and St. Paul Railroad Company are now offering the lands hereinbefore described for sale and are attempting to make sales thereof to purchasers ignorant of your orator's rights, and your orator fears that if said company is not restrained from so doing that it will make sales of said lands, and that a cloud will thereby be cast upon the title of your orator, and that great injury and wrong may be done your orator by said defendant, Sioux City & St. P. R. R. Co.,
152 thereby.

In tender consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law

and can only be relieved in a court of equity, where such matters are properly cognizable and relievable, to the end, therefore, that the said Sioux City and St. Paul Railroad Company, Alexander H. Rice, Elias F. Drake, John H. Gear, governor, and James K. Powers, register of the State land office, of the State of Iowa, may appear and answer this your orator's bill without oath, your orator hereby waiving the necessity of the answers of such defendants being put in under oaths of said defendants or the oath of either of them; that the certificates heretofore issued by the governor of the said State of Iowa and register of State land office of said State to the said defendant, Sioux City and St. Paul Railroad Company, for the lands or any part thereof hereinbefore described may be annulled, vacated, and set aside by the decree of the honorable court, and that said governor and register of the State land office may be diredted to issue a certificate, patent, or other proper conveyance thereof to your orator, so as to convey the title to said lands to your orator, and that it may be further decreed that said lands are free and clear from the lien of the mortgage so as aforesaid executed by the said Sioux City and St. Paul Railroad Company to the said Alexander H. Rice and Elias F. Drake, and that your orator may have such other relief and further relief as the nature of its case shall require and as shall be agreeable to equity—

May it please your honors to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court, directed to the said defendant, The Sioux City and St. Paul Railroad Company, its officers, agents, attorneys, and directors, enjoining and restraining them and each of them from selling or conveying said lands or any part or portion thereof or from making any incumbrance thereon or in any manner disposing of the same.

And may it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, to be directed to said Sioux City & St. Paul Railroad Company, Alexander H. Rice, Ealias F. Drake, John H. Gear, governor, and James K. Powers, register of the land office, of the State of Iowa, commanding them and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors and then and there to answer the premises, and, further, to stand to and abide such order and decree ther-in as shall be agreeable to equity and good conscience; and your orator will ever pray, &c.

(S'g'd) JOHN W. CARY,
Solicitor for Complainant.
(Signed) THOS. UPTEGRAFF, *Of Counsel.*

The exhibits referred to and attached to the said bill of complaint are as follows:

Exhibit No. 1 is an act of Congress, approved May 12, 1864, granting the lands to the State.

Exhibit No. 2 is the act of the legislature of the State of Iowa, approved April 20, 1866, accepting of the grant of lands.

Exhibit No. 3 is an act of the legislature of the State of Iowa making correction in act described in Exhubit No. 2.

Exhibit No. 4 is an act of the legislature of the State of Iowa resuming the lands from the McGregor Western Railway Company.

153 Exhibit No. 5 is an act of the legislature granting the lands to the McGregor and Sioux City Railway Company.

Exhibit No. 6 is an assignment of the land grant from the McGregor Western Railway Company to the McGregor and Sioux City Railway Company.

Exhibit No. 7 is the acceptance by the McGregor and Sioux City Railway Company of the grant of the legislature to that company.

Exhibit No. 8 is a map showing the location of the lands.

Exhibit No. 9 is an act resuming the lands from the McGregor and Missouri River Railway Company.

Exhibit No. 10 is an act of the legislature of the State of Iowa granting the lands to the Chicago, Milwaukee and St. Paul Railway Company.

Exhibit No. 11 is a list of lands describing the same by Government subdivisions.

Exhibit No. 12 is a copy of patent No. 3 from the U. S. to the State of Iowa for the benefit of the Sioux City and St. Paul Railroad Company.

Exhibit No. 13 is a list of lands patented to the State of Iowa and certified to the Sioux City and St. Paul Railway Company.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

Exhibit No. 17.

In the Circuit Court of the United States for the District of Iowa.

Answer in Equity.

The Chicago, Milwaukee and St. Paul Railroad Company, Complainant,
against
The Sioux City & St. Paul Railroad Company, Alexander H. Rice and Elias F. Drake, Trustees; John H. Gear, Governor of the State of Iowa; James K. Powers, Register of the State Land Office of Iowa, Defendants.

The joint and several answers of The Sioux City and St. Paul Railroad Company, Alexander H. Rice and Elias F. Drake, trustees, defendants, to the bill of complaint of The Chicago, Milwaukee and St. Paul Railway Company, complainant.

These defendants, reserving to themselves and to each of them all right of exception to the said bill of complaint, for answer thereto saith:

1st. That the defendants admit that the Sioux City and St. Paul Railroad Company was duly organized under and by virtue of the laws of the State of Iowa and a citizen of said State, and admit the citizenship and residence of the other defendants as alleged in said bill of complaint.

2. And these defendants, further answering, admit the passage of the act of Congress set forth and shown in "Exhibit 1" of said bill of complaint, and the said act is here referred to as showing what was enacted therein, and beg leave to make the same a part of their answer, and refer to therein the same as though the same was fully set forth in such answer.

154 3. That these defendants admit the passage of the acts of the legislature of the State of Iowa set forth and shown in Exhibits Nos. 2, 3, 4, 5 of the said bill of complaint, and, for greater certainty for what was enacted therein, beg leave to refer the same to this court for the construction, interpretation, and effect thereof.

4. That these defendants admit that instruments in writing, of which Exhibits 6 and 7 of the said bill of complaint are copies, were filed in the office of the secretary of the State of Iowa at the time alleged in said bill, but these defendants further severally say that they or any or either of them to the knowledge or belief of the other or either of them do not know and have never been informed save by the said complainant's bill and cannot set forth as to their belief or otherwise whether the McGregor Western Railway Company executed and delivered to the McGregor and Sioux City Railway Company the instrument shown as Exhibit 6 or whether the acceptance set forth in Exhibit 7 was ever duly executed by the McGregor and Sioux City Railway Company, and leaves the complainant to make proof thereof as it shall be advised is material, and, if the same are proven and admitted, these defendants, for greater certainty, beg leave to refer the said instrument, when the same shall have been produced, to this court for the interpretation and effect thereof.

5. That these defendants admit that on or about the 19th day of August, 1864, the McGregor Western Railway Company definitely fixed and located its line of railroad from McGregor, in Clayton county, Iowa, to Calmar, in Winneshiek county, and thence westward through the counties of Chickasaw, Floyd, Cerro Gordo, Hancock, Kossuth, Palo Alto, Clay, and O'Brien to a point in O'Brien county, in section 19, township 95, range 40, and that a map of such location was filed in the General Land Office of the United States on the 30th day of August, 1864, and that on the 12th day of September following the odd-numbered sections within twenty miles on either side of said line not sold, reserved, or otherwise appropriated were withdrawn from market and selected by the proper official authorities, and the said location is shown on diagram annexed to said bill as McGregor Western railway line, 1864; and, as these defendants allege, that the said line was by the said McGregor Western railway line definitely fixed and located from a point at or near the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route at or near the

43d parallel of north latitude to a point in O'Brien county, in section 19, township 95, range 41, and that on or about the 30th day of August, A. D. 1864, the McGregor Western Railway Company, through its officers, caused to be filed in the office of the Secretary of the Interior of the United States a map of such location of their said road, and on the 12th day of September, A. D. 1864, the Commissioner of the General Land Office of the United States, under the provisions of section- five and eight of the act of Congress approved May 12th, 1864, by an order from said department directed and sent to the land officers at Sioux City, Iowa, withdrew from said location, homestead entry, or pre-emption claim all the odd-numbered sections of public lands in said district within twenty miles on each side of said located line, which order was received by said officers of the land office at Sioux City September 29th, 1864, and the lands were from that date withdrawn in accordance with said orders, and on the 24th day of October, A. D. 1864, the Commissioner of the General Land Office, in order to more definitely fix and determine the lands so withdrawn and to select and reserve the same for said McGregor Western Railway Company, made
155 and forwarded to the local land office at Sioux City a map showing the line of said road and indicating and defining the ten-mile limits of the said grant by line in pink color drawn on said map and twenty-mile limits of said grant in green color and directing that the even-numbered sections within such ten-mile limits be subject to sale or pre-emption at $2.50 per acre and to homestead entry, subject to the restriction in the 1st section of the homestead act.

That upon the diagram hereto annexed are shown lines defining the 10 and 20 mile limits referred to in said order of October 24th and accompanying map designating the land so selected and withdrawn called "10-mile limits, withdrawn October 24th, 1864," and "20-mile limits, withdrawn October 24th, 1864," which diagram is hereto annexed to this answer and appears upon the map marked Exhibit "A."

And these defendants allege that thereupon the limits of the grant of the State of Iowa for the use and benefit of the McGregor Western Railway Company became fixed and determined by the act of the said railway company and the proper officers of the United States, and there was afterward sold and disposed of by the United States, within the said ten-mile limits of such location as so defined, large quantities of land by purchase, pre-emption, and homestead entry at the double minimum price provided for in said act of Congress of May 12th, 1864 (Exhibit 1 of pl'ff'- bill).

6. And these defendants further severally say that they or any of them do not know and have never been informed, save by the complainant's said bill, and cannot set forth as to their belief or otherwise whether the said land department of the United States in its annual reports and otherwise for the year- of 1865, 1866, and partially in 1867 issued and published a map of Iowa, entitled "diagram of public lands in Iowa," on which the line of railroad with which McGregor Company were required to intersect in O'Brien

county is shown in nearly a straight line from Sioux City to the Minnesota State line, in rang- 34, crossing O'Brien county diagonally from southwest to northeast corner, or whether they published any map or diagram during said years showing any line or route of said road in any manner.

And these defendants deny that said publications were known to the Sioux City and St. Paul Railroad Company, and deny that the said publication or said line or route of said road shown thereon was ever treated by the officers of the said company, either before or after or during the year 1864 or at any time, as the probable route of their railroad, as having any connection with or reference or relation to their line of road, or that they had any knowledge or notice thereof.

And these defendants allege that the Sioux City and St. Paul Railroad Company was not organized or in existance prior to the first day of January, 1866, and that they had no line or route of road prior to the location of their line in the fall of 1866 (written in pencil: "corrected from 1867"), as hereinafter stated, which location was made without reference to or knowledge *as* such publications.

7. That these defendants deny each and every allegation in the 11th paragraph of the said bill of complaint relating to the location of the line of the Sioux City and St. Paul railroad except as the same may correspond with the facts hereinafter alleged in relation thereto in paragraph 24 of this answer.

8. That these defendants deny each and every allegation in the 12th paragraph of said complaint and in respect to the matters set forth in said paragraph, and that the said McGregor and
156 Sioux City Railway Company, by its officers and agents, intending and designing to injure and defraud the defendant company and deprive it of a portion of its lands, to wit, the lands described in said bill of complaint, procured the acquiescence of the land department of the United States to the various steps, orders, approvals, letters, and withdrawals referred to in said paragraph of said bill of complaint in reference to the survey amd alleged location of said line through said counties of Clay and O'Brien to an intersection with the Sioux City and St. L Paul lines in said coutny of O'Brien.

That in furtherance of said fraudulent and unlawful purpose said McGregor and Sioux City Railway Company did, in the year 1869, cause a pretended survey to be made of said new line (though with what care or thoroughness these defendants are not advised), and did cause a map thereof through said county of Clay, but no further, to be made of the same and filed with the Secretary of the Interior, and afterwards, in said year 1869, did make a furtherance of said pretended line through the county of O'Brien to an intersection with the line of the defendant company and caused a map thereof to be made and filed with the Secretary of the Interior in Sept. of that year.

That said survey of said line and the making and filing of the maps thereof was done wholly without authority of law or of any

act, direction, or order of any officers of the United States having authority on the premises; that the same was not in compliance with any order of -he Commissioner of the General Land Office, but was in direct violation thereof and an unwarranted departure from the said lines of route as definitely fixed and located in 1864, as stated in said bill of complaint and herein, and from the lines of road referred to and contemplated in the said act of Congress (Exhibit One of said bill of complaint) requiring the said road to be located on or near the 43rd parallel of north latitude and of the requirement of said Commissioner that they show their true location.

And these defendants allege that the location made in 1864 as aforesaid was and is a compliance with the terms and conditions of the said act of Congress, and is a good and practicable route and location, free from any engineering difficulties and easy of construction, and was made and established by the McGregor Western Railroad Company and accepted and approved by the proper legal authorities of the United States to a point in section 19, township 95, range 40 west, from which point to a point of intersection with the Sioux City and St. Paul Railroad Company was the only part of said line not definitely located and established.

That from such point in said section 19 to such point of intersection is a good, direct, practicable route, free from engineering difficulties and easy of construction.

That notwithstanding which the said McGregor and Missouri River Railway Company, unlawfully and without authority and in defiance of the terms and conditions of the said act of Congress and requirements of the said Commissioner, and with the intent to injure, wrong, and defraud the Sioux City and St. Paul Railroad Co. and to bring within the ten and twenty mile limits of the location to be made by said company large, valuable tracts of land in Osceola and Dickinson counties and not within the ten-mile or twenty-mile limits of their true, definite, and fixed location of the Sioux City and St. Paul railroad, and set apart and reserved for said road, that they might set up a fraudulent, wrongful, and fictitious claim
157 thereto and annoy, harass, injure, and defraud the said defendant corporation, in the fall of 1868 and spring of 1869 wrongfully, unlawfully, and fraudulently made a survey of a line of railroad through Clay and O'Brien counties, as stated aforesaid herein, making their pretended and fraudulent line, after the same comes within the twenty-mile limits of Sioux City and St. Paul railroad, just so far to the north of the true located line, as that the twenty-mile limit of such fraudulent line would extend to and coincide with the north line of the State of Iowa and include within the said limits the land up to the north line of the State. Upon the diagram hereto attached, marked "Exhibit A," is shown the ten and twenty mile limits, as claimed under such fraudulent survey of 1869, marked "ten-mile limit of location of 1869" and 20-mile limit of location of 1869.

9. That these defendants deny that the State of Iowa has ever selected the point on the south line of the State of Minnesota between the Big Sioux river and the west fork of the Des Moines

river as the terminal point of the line of railroad from Sioux City, as provided by said act of Congress; but, on the contrary, thes- defendants aver that the State of Iowa, by law duly enacted, authorized the selection of the said terminal point of the line of said railroad from Sioux City, as required by said act of Congress, which last-mentioned law of the State of Iowa is set forth in Exhibit B, hereto annexed and made a part hereof, to be made by the Sioux City and St. Paul Railroad Company, and that the said selection was made by this defendant, The Sioux City and St. Paul Railroad Company, pursuant thereto, as agent of the State of Iowa and by the authority therein conferred and powers therein delegated, and that said selection of said terminal point was duly approved by the Governor of the State of Iowa and by the Secretary of the Interior of the United States, and that said selection is in all respects legal, valid, and binding upon all parties interested therein, upon said State of Iowa, and upon the United States.

10. That these defendants deny that the said Sioux City and St. Paul Railroad Company has constructed its said railroad as alleged in said complaint or otherwise than therein stated.

And defendants, further answering, aver that is has constructed its said railroad, beginning in said Sioux City and ending at the south line of the State of Minnesota, in full compliance with said act of Congress and aforesaid acts of the legislature of the State of Iowa relating thereto, except not to exceed twenty-four miles thereof lying between Sioux City and Le Mars; that the length of road completed is 57.22 miles, and it has constructed its said railroad through and continuous with all the lands in controversy herein, and has constructed sufficient and all of its said railroad necessary and required to enable it to receive and to entitle it to all of lands running to it under and by virtue of said grants, among which lands to which it is so entitled are the lands in controversy herein, and that by virtue of the premises and facts herein stated the said lands in controversy became and of right ought to be the absolute property of this defendant, the said Sioux City and St. Paul Railroad Company.

11. That these defendants severally say that they or either of them, to the knowledge or belief of the others or either of them, do not know and have never been informed save by the complain-t's bill and cannot set forth as to their belief or otherwise whether at the date of the congressional grant the Government lands designated by odd-numbered sections within twenty mile- of eacher
158 side of the line from McGregor or westward and east of the east line of Kossuth county, Iowa, had all been sold, reserved, or otherwise appropriated by the United States with a few unimportant exceptions, or what amount of such odd-numbered sections had been sold, reserved, or appropraited, or whether west of the east line of Kossuth county and thence west within twenty miles on either side of the line located large quantities of the Government land designated by odd-numbered sections had been sold, reserved, or otherwise appropriated by the United States prior to the taking effect of the said congressional grant, or as to whether there could be found that

enured to the McGregor grant, either exclusive or inclusive of the lands in controversy, the amount of acres stated in said bill of complaint, and leaves the complainant to make such proof of the same as it may be advised is material; but these defedndants allege that there were sufficient lands in the odd-numbered section lying outside the ten-mile limits and within the twenty-mile limits of the said grant to the State of Iowa to aid in building a railroad from McGregor westward, exclusive of the lands in controversy in this action not sold, reserved, or otherwise appropriated from which to select and make any and all deficiencies made or occasioned by the sale, reservation, or appropriation by the United States of any lands in said grant after the passage of the said act of Congress May 12th, 1864, and sufficient amount of such lands were selected and certified to the said State of Iowa for the use and benefit of the McGregor and Missouri River Railway Company from the odd-numbered sections outside the ten and inside the twenty mile limits of such grant to make up for any and all deficiencies made or occasioned by the sale, reservation, or appropriation by the United States of any lands within said grant after the passage of the said act of Congress May 12th, 1864.

12. That these defendants admit the passage of the act of the legislature of the State of Iowa set forth and shown in Exhibit No. "9" of complainant's bill of complaint, and for greater certainty as to what was enacted therein beg leave to refer the same to this court for the construction, interpertation, and effect thereof.

13. That these defendants admit the passage of the act of the legislature of the State of Iowa set forth and shown in Exhibit "10" of the said beill of complaint, and for greater certainty as to what was enacted therein beg leave to refer the same to this court for the construction, interpertation, and effect thereof.

14. That these defendants further severally say that they or either of them to the knowledge or belief of the others or either of them do not know and cannot say of their own knowledge whether the complainant accepted the said grant and gave and filed the bond required in the last-mentioned act, and leave the complainant to make proof thereof as it may deem material.

But these defendants allege that the railroad built and constructed by the complainant to a point of junction with the Sioux City and St. Paul railroad at Sheldon, in O'Brien county, is not built or constructed through the counties of Clay or O'Brien either upon or near the definitely located line of the McGregor Western Railway Company or upon the fraudulently surveyed line of the McGregor and Missouri River Railway Company, but upon another and different line from either, and that the line of road constructed by the complainant, in so far as the location is concerned, is a departure from and in no manner in compliance with the terms and conditions of the said act of Congress of May 12th, 1864; that said line is shown on Exhibit "A," hereto attached.

15. That as to whether prior to the 1st day of January, 1879, the governor of the State of Iowa certified to the Secretary of the In-

terior of the United States that the complainant had com-
159 pleted its railroad from Algona, in Kossuth county, to Sheldon, in O'Brien county, as stated in paragraph 24 in complainant's bill, these defendants severally say that they have no information or belief; but these defendants deny that thereby the said complainants became entitled to demand and receive from the governor of the State of Iowa and the register of the State land office patents for all or any of the lands enuring to the road from a poi-t at the foot of Main street, South McGregor, in said State, in a westerly direction by the most practicable route on or near the 43 parallel of north latitude to a point of intersection in O'Brien county with the railroad running from Sioux City to the State line under the act of Congress aforesaid, which had not previously been patented to the McGregor and Missouri River Railroad Company, and deny that they became or are entitled to demand or receive from the said governor and register of the State land office of the State of Iowa under the said act of Congress patents for any lands whatever.

16. That these defendants admit that the lands described in Exhibit "11" of the plaintiffs were on the 9th day of June, 1863, by the Commissioner of the General Land Office of the United States certified to the Secretary of the Interior of the United States as land enuring to the State of Iowa in aid of the construction of the Sioux City and St. Paul Railroad Company, and recommended that the same be approved and carried into patent, but deny that the same were wrongfully, unlawfully, and mistakenly so certified and recommended.

17. That the defendants admit that on the 10th day of June, A. D. 1873, the Secretary of the Interior of the United States approved the said list, certificate, and recommendation and in pursuance thereof, on the 17th day of June, A. D. 1873, a patent from the United States was executed and issued to the State of Iowa for all of the said lands for the use and benefit of this defendant, The Sioux City and St. Paul Railroad Company, but deny that the said Secretary of the Interior disregarded the rights of the complainant or the McGregor and Missouri River Railway Company or the McGregor Western Railway Company, or any other beneficiary under the trust imposed by the said act of Congress, or that the said list, certificate, and recommendation were wrongfully, unlawfully, or mistakenly approved, or that the patent for the said lands was wrongfully, unlawfully, or mistakenly executed or issued, and deny that by any wrong or mistake the list of lands described in Exhibit "12" *were* patented to the State of Iowa on the 25th day of June, A. D. 1875, or that the patent for such list was wrongfully, unlawfully, or mistakenly issued; and these defendants allege that after the location of the said McGregor and Missouri River railroad as aforesaid, and prior to the commencement of this action, this defendant, The Sioux City and St. Paul Railroad Company, in due form made application to the proper officers of the United States to have the lands appertaining to its railroad under said act of Congress and the said act of said General Assembly, set forth in said Exhibit- 11, 12, 13, patented and

conveyed to the said State of Iowa in trust for the use and benefit of the said Sioux City and St. Paul Raioroad Company, and that the said application was resisted by said McGregor and Missouri River Railway Company; but that after full hearing and examination into the merits thereof and after hearing and considering all the proofs and allegations of said McGregor and Missouri River Railroad Company in opposition thereto, the said Secretary of the Interior of the United States, by and with the advice and conformity with the opinion of the Attorney General of the United States,
160 did, in June, A. D. 1873, decide and determine that said lands in controversy of right and according to law and the terms and conditions of said act of Congress and said last-mentioned act of General Assembly belonged to this defendant, The Sioux City and St. Paul Railroad Company, and did then award said lands in controversy to the said Sioux City and St. Paul Railroad Company, and that pursuant to said decision and award of the Secretary of the Interior the proper patent or patents were in due form of law issued to said State of Iowa for all of said lands in controversy for the use and benefit of this defendant, The Sioux City and St. Paul Railroad Company.

18. That these defendants admit that on the 31st day of December, 1877, the governor and register of the State land office of the State of Iowa certified to the Sioux City and St. Paul Railroad Company the lands described in Exhibit "13" of complainant's bill, but deny that the same was wrongfully, unlawfully, or mistakenly so certified, and deny that the governor and register of the State land office of the State of Iowa wrongfully, unlawfully, and mistakenly refused to certify the said lands in the said three lists to the complainant, but allege that such refusal was right, lawful, and proper.

19. That these defendants admit that the lands described in the lists annexed *yo* the complainant's bill of complaint marked Exhibits "11, 12, 13" lie within twenty miles on one side or the other of the Sioux City and St. Paul Railroad Company's line of road, but deny that the said lands lie within twenty miles of one side or the other of the line of complainant's railway or of the line of road located and approved by the proper legal authorities of the line of said road contemplated by the act of Congress aforesaid approved May 12th, 1864.

That on the diagram hereto annexed, marked Exhibit "A," is shown the location and the ten and twenty mile limits of each side of said locations and of the Sioux City and St. Paul railroad.

20. That the defendants admit the execution of the trust deed to A. H. Rice and E. F. Drake as set out in said bill, and that the said A. H. Rice and E. F. Drake claim the interest in said lands granted and conveyed to them by such deed of trust.

21. And these defendants, further, jointly and severally, answering to the said complain-t's bill, allege that in the month of January, 1866, the articles of incorporation of the Sioux City and St. Paul Railroad Company were duly signed, filed, and recorded as provided by the laws of the State of Iowa, and thereupon and there-

after the said company became and still is a corporation under the laws of the State of Iowa.

22. That in the year 1866 there was duly enacted by the General Assembly of the State of Iowa a statute, which became a law by the approval of the governor of said State of Iowa on the third day of April, A. D. 1866, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State,'" the same being chapter 134 of the Laws of Iowa for 1866, and which is set forth in said Exhibit "B," hereto annexed and made a part hereof, and that thereby the lands, rights, and privileges granted to the said State of Iowa by said act of Congress, set forth in said Exhibit No. 1 of said complainant's bill, were accepted by the said State of Iowa on the terms, restrictions, and conditions named and specified in said act of Congress, and that all the said lands and the rights, franchises, and privileges appertaining to the said line of railroad therein provided for from said Sioux City to the south line of the State of Minnesota were conferred upon and granted to the defendants The Sioux City and St. Paul
161 Railroad Company.

23. That within six months after the passage of said act set forth in said Exhibit "B," to wit, on the 25th day of September, A. D. 1866, the Sioux City and St. Paul Railroad Company filed in the office of the secretary of the State of Iowa a written assent and acceptance of said mentioned act.

24. That prior to the organization of said Sioux City and St. Paul Railroad Company, as stated herein, the Iowa Falls and Sioux City Railway Company, named in said bill of complaint, had under acts of Congress and the State of Iowa obtained a grant of lands lying and being in the counties of Clay and O'Brien and adjacent counties on the *courth* to aid in building its line of road and had duly surveyed and definitely fixed its line of route and had thus received a prior right to said lands as against said defendant company, and said McGregor and Western Railway Company having located and definitely fixed its line of road as far west as section 19, township 95, range 40 aforesaid, as hereinbefore stated and admitted, which facts were well known to this defendant company at and prior to the location of its own line, it became necessary and was proper and for the interest of said company to so locate its said line of road as to produce the least conflicting or overlapping of its land limits with those of said railway companies having prior locations and comply with the provisions of law in that behalf made and provided.

That with this object and to unite the said connection hereinafter set forth on the 27th day of September, 1866, the Sioux City and St. Paul Railroad Company commenced the location of its line of railroad at Sioux City, in the State of Iowa, and between that time and the fourth day of October of said year it definitely located and established its line of road by surveying and staking the same upon the face of the earth from Sioux City to the south line of the State of Minnesota, at the point selected by the said company as agent of

the said State of Iowa for that purpose authorized and empowered, between the Big Sioux and the west fork of the Des Moines river, being a point in range 40 about equidistant from each of said streams; that said line is shown in Exhibit "A," hereto attached.

That prior to the location of the said line or route of road the United States has partly by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3d, 1857, and partly by the act of Congress entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12th, 1864, being section seven of the act set forth and shown in Exhibit "1" of the complainant's bill, made a large and valuable grant of land to the State of Minnesota for the purpose of aiding in the construction of a railroad in said State from St. Paul and St. Anthony via Minneapolis to a convenient point of junction west of the Mississippi to the southern boundary of the State in the direction of the mouth of the Big Sioux river, near which the town of Sioux City was and is situated, with which this defendant's road was expected to connect and form a continuous line, and the said line of road was then located in the State of Minnesota to a point in township 104, in range 39, in said State, and the line and route of the said Sioux City and St. Paul railroad was fixed and determined in part with reference thereto and for the purpose of making
162 it possible and feasible to connect with said road and form a continuous line from St. Paul and Minneapolis to Sioux City, as contemplated in said acts of Congress.

25. That on or about the 10th day of July, 1867, the said Sioux City and St. Paul Railroad Company filed a map showing the route of said road in the office of the governor of the State of Iowa, and also in the office of the secretary of the State of Iowa, and, immediately after filing of said map with the said governor and said secretary as aforesaid, the said governor fixed his official signature thereto and filed or caused to be filed such map in the office of the Secretary of the Interior of the United States.

26. That on the 26th day of August, A. D. 1867, the Commissioner of the General Land Office of the United States acknowledged the filing of said map as being in accordance with the act of Congress approved May 12th, 1864, and, by an order directed to the register and receiver of the land office at Sioux City, Iowa, withdrew from sale or other disposal all the odd-numbered sections within twenty miles on each side of the said line, as shown and located upon the map filed as aforesaid, and reserved and selected the same as land enuring to the State of Iowa for the said Sioux City and St. Paul Railroad Company, and directed that the even-numbered sections within such limits be held for sale and disposed — only at the double minimum price of such public lands.

That the said order was accompanied by a map showing the ten and twenty mile limits of the said grant; that on the annexed dia-

gram, marked Exhibit "A," is shown the said ten and twenty mile limits, so designated and defined by said order, marked "ten-mile limits of Sioux City and St. Paul railroad," "twenty-mile limits of Sioux City and St. Paul railroad."

27. That at the time of the withdrawal of the said lands from sale or disposal for the Sioux City and St. Paul Railroad Company the said lands, excepting such as had been sold or upon which there were pre-emption claims or homestead entries, were, throughout nearly the whole territory included in said ten and twenty mile limits, in the counties of Osceola, O'Brien, and Dickinson free and unappropriated and unreserved public lands, and thereupon became and were reserved and appropriated for the purpose of aiding in the construction of the Sioux City and St. Paul railroad, and at the time of the location of the said line of the McGregor and Missouri River railway through Clay and O'Brien counties to a point of intersection with the Sioux City and St. Paul railroad the same were reserved and appropriated lands and not subject to the grant to said road.

28. That in the year 1872 the said Sioux City and St. Paul Railroad Company commenced the construction of its railroad, and prior to the first day of October had constructed in Sioux City one and one-tenth miles of main track and three-fourths of a mile of side track for its use there and erected in said town its depots and large and expenseve machine shops, expending in such town therefor over one hundred and twenty thousand dollars, and during the same time, commencing with the point of connection on the south line of the State of Minnesota, where the land-grant railroad from St. Paul and Minneapolis provided for in the acts of Congress of March 3d, 1857, and of May 12th, 1864, intersected said State line, which road was then just constructed by the defendant corporation, The Sioux City and St. Paul Railroad Company, having a land grant as stated aforesaid and forming a continuous line therewith, the said company constructed, as a first-class railroad and in full compliance with the acts of Congress and the act of the Legislature of the State of Iowa
163 aforesaid, in a southwesterly direction, prior to June 15th, 1872, ten miles of said road, and ten *l*imes more in like manner prior to July 15, 1872, and ten miles further in like manner prior to August 10th, 1872, and ten miles farther in like manner prior to September 10th, 1872, and six and one-fourth miles further in like manner prior to September 25th, 1872, to the village of Le Mars and to a connection with the Iowa Falls and Sioux City railroad, then and still being run and operated by the Illinois Central Railroad Company, over which it obtained the right to run and operate to Sioux City, a distance of twenty-four miles, and since which time it has continued to run and operate in connection with the company in the State of Minnesota from St. Paul to Sioux City.

29. That on the 26th day of July, 1872, Cyrus C. Carpenter, then governor of the State of Iowa, certified to the Secretary of the Interior of the United States that two sections of railroad had been constructed from the south line of the State of Minnesota southerly in the direction of Sioux City through the counties of Osceola and

O'Brien, in the State of Iowa, in accordance with the provisions of the act of Congress aforesaid, approved May 12th, 1864, and that each of said sections comprised ten consecutive miles of road, in all twenty miles of road, upon which the cars were then running, and the same was constructed as aforesaid in all respects as a first-class railroad, and on the 10th day of August, 1872, the said governor certified to the said Secretary of the Interior in like form and manner that another section of ten consecutive miles was in like manner constructed and completed, and on the 4th day of February, 1873, the said governor certified to the said Secretary of the Interior in like form and manner the construction and completion of two more sections of ten miles each of such railroad, making in all fifty miles so certified, which said road is coterminous with all the lands in controversy in this action, and the said company became the absolute and unqualified owner of all said lands and was thereupon entitled to have issued and delivered to it patents for said lands.

30. That the Secretary of the Interior of the United States on the 17th day of June, 1873, caused to be made and executed and delivered to the State of Iowa a patent for all lands described in Exhibit "No. 11" of complainant's bill, conveying to the said State of Iowa all the said lands for the use and benefit of the Sioux City and St. Paul Railroad Company, and on the 25th day of January, 1875, Secretary of the Interior caused to be patented to the State of Iowa, in like form and manner, for the use and benefit of the Sioux City and St. Paul Railroad Company, the lands so described in Exhibit 12 of the complainant's bill, and the said State of Iowa accepted the same and took and held the title to the same in trust for the said Sioux City and St. Paul Railroad Company; that a copy of such patents, omitting the descriptions of the lands only (which are shown in exhibits to said bill and other lands not in controversy), *are* hereto annexed and marked Exhibits "C" and "D" and made a part of this answer.

31. That in the year 1874 there was enacted by the General Assembly of the State of Iowa an act entitled "An act authorizing and directing the governor to certify to the Sioux City and St. Paul Railroad Company certain lands named therein," approved March 13th, 1874, whereby the governor was authorized and directed to certify to the Sioux City and St. Paul Railroad Company all the lands which were then held by the State of Iowa for the use and benefit of the said Sioux City and St. Paul Railroad Company, in accordance with the provisions of section 2 of chapter 144 of the Eleventh General Assembly (said chapter 144 being the same statute set forth in Exhibit No. "2" of complainant's bill).
164 A copy of said act is hereto annexed and marked Exhibit "E" and made a part of this answer.

32. That immediately thereafter the said Sioux City and St. Paul Railroad Company made application to the governor of the State of Iowa for the certificates provided for in said last-mentioned act, and on the 31st day of December, 1877, the said governor certified to the said Sioux City and St. Paul Railroad Company so many of the

lands described in said act as are described in Exhibit No. 13 of the complainant's bill, and the said Sioux City and St. Paul Railroad Company has the full and perfect estate in all the lands in controversy in this action and is invested with the full and complete evidence of such title to so many as are in Exhibit No. "13" (13) of complainant's bill, and ought not to be disturbed in its quiet and peaceable enjoyment thereof.

33. That these defendants expended large sums of money in the care, management, and control of said lands, and have paid large sums of money in taxes upon the same, amounting to the sum of at least ten thousand dollars, which enure to and for the benefit of said lands, the benefit of whomsoever shall be found to be entitled to the same, and these defendants pray this honorable court that if, upon the final hearing of this cause, your honor should find that the complainant is or ought to be entitled to any portion thereof that an accounting be made under the proper order of the court of all sums the defendants or any of them have paid or expended for or on account of any of said lands, and that the complainant pay the same, with interest thereon, to the defendants before receiving any portion thereof.

34. And these defendants, further answering, deny that the said complainant is entitled to any relief or any part thereof in the said bill of complaint demanded, and these defendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said bill of complaint; and these defendants pray leave to be dismissed with their reasonable costs and charges most wrongfully sustained.

[SEAL.] THE SIOUX CITY & ST. PAUL RAILROAD CO.

(Signed) ALEXANDER H. RICE,
ELIAS F. DRAKE, *Trustees*,
By J. H. SWAN,
Solicitor for Defendants.

(Signed) E. C. PALMER, *Of Counsel.*

Exhibit No. "A," attached to the foregoing answer, is a diagram showing the 10 and 20 mile limits on each side of the Sioux City and St. Paul railroad.

Exhibit "B" is the act of the legislature of the State of Minnesota accepting the grant of Congress in granting the same to the Sioux City and St. Paul Railroad Company.

Exhibit "C" is patent from the United States to the State of Iowa for the use and benefit of the Sioux City and St. Paul Railroad Company for the same lands described in plaintiff's bill of complaint in Exhibit No. 11.

Exhibit "D" is patent to the State of Iowa for the use and benefit of the Sioux City and St. Paul Railroad Company of lands described in Exhibit No. 12 of the petition.

Exhibit "E" is act of the legislature of the State of Iowa, approved March 13th, 1874, directing the governor to certify the lands to the Sioux City and St. Paul Railroad Company.

165 (Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

EXHIBIT 18.

In the Circuit Court of the United States for the District of Iowa, May Term, 1879.

CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD COMPANY
vs.
SIOUX CITY AND ST. PAUL RAILROAD COMPANY *et al.*

Comes now John H. Gear, governor, and James K. Powers, register of the State land office of the State of Iowa, parties defendants to plaintiff's bill of complaint in this cause filed, saving severally to themselves all exceptions by reason of the errors and imperfections in the said bill, answering, say:

They admit that the Congress of the United States and the legislature of the State of Iowa enacted the various statutes severally as the complainant has set forth as exhibits in its said bill.

That as to all other matters alleged in said bill these defendants have not sufficient knowledge or information on which to form a belief.

These defendants therefore ask that the various allegations in plaintiff's bill not by this their answer admitted the said plaintiff be required to prove.

They pray to be dismissed from this cause with their costs.

J. F. McJUNKIN,
Att'y Gen'l of State of Iowa, Solicitor for Defendants John Gear, James K. Powers.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

EXHIBIT 19.

The Circuit Court of the United States, District of Iowa, May Term, 1886.

Hon. James M. Love presiding.

FRIDAY, *May* 21, 1886.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.
vs.
SIOUX CITY AND ST. PAUL RAILROAD Company, Alexander H. Rice, and E. F. Drake, Trustees; John H. Gear, Governor, and James K. Powers, Register of the State of Iowa Land Office.
No. 1481. Equity. Decree.

166 This case came on to be furhter heard on the pleadings and pro-fs and the mandate and decision of the Supreme Court

of the United States, John W. Cary appearing as counsel for the complainant and J. H. Swan as counsel for the defendants, and after hearing counsel, and the said pleadings, proofs, mandate, and opinion of the Supreme Court having been duly considered and it appearing to the said court that the said complainant had fully complied with all the conditions of the act of Congress approved May 12th, 1864, granting lands to the State of Iowa to aid in the construction of a railroad from the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction, by the most practicable route on or near the forty-third parallel of north latitude until it could intersect the road running from Sioux City to the Minnesota State line, in the county of O'Brien and said State, and with the act of the legislature of the State of Iowa approved Feb. 27, 1878, conferring the said grant upon the complainant, and had fully completed said railroad within the time specified in said act of Congress and said act of the legislature, and is entitled to receive all the lands contained in said grant not heretofore granted by the State of Iowa; and it further appearing to said court that the said defendant, Sioux City and St. Paul Railroad Company, has fully complied with all the conditions of said act of Congress approved May 12, 1864, granting certain lands in the State of Iowa to aid in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the State of Iowa might select, between the Big Sioux and west fork of the Des Moines river, and with the act of the legislature conferring said grant upon the said Sioux City and Saint Paul Railroad Company, and had fully completed said railroad within the time specified in the said act of Congress and the said act of the legislature from the said State line of the State of Minnesota, in am southerly direction, to Le Mars, in said State of Iowa, a distance of fifty-six and $\frac{25}{100}$ miles, and that it is entitled to receive all the lands applicable to said grant from said State line of the State of Minnesota to said Le Mars to the extent of ten sections per mile of road completed;

And it further appearing to said court that the following-described pieces and parcels of land marked class No. one (1), to wit:

Class No. One (1).

Lands within the joint ten-mile limits of both companies.

Description.	Section.	Town.	Range.	Acres.
Patented s hf	9	98	40	320.00
Patented all	29	98	40	640.00
Patented s w qr	31	99	40	137.88
Patented s w qr and s hf of n w qr	33	99	40	240.00
Patented s e qr of n w qr	7	96	40	41.00
Patented n hf, s w qr, and n hf of s e qr	27	98	41	560.00

Class No. One (1)—Continued.

	Description.	Section.	Town.	Range.	Acres.
	Patented s hf of s e qr	3	95	42	80.00
	Patented all	3	98	40	641.98
	Patented all	5	98	40	640.00
	Patented all	7	98	40	600.82
	Patented all	11	98	40	640.00
	Patented all	17	98	40	640.00
	Patented all	19	98	40	613.60
167	Patented all	21	98	40	640.00
	Patented all	31	98	40	625.28
	Patented s e qr, s hf of n e qr, and s hf of n w qr	31	99	40	308.90
	Patented s e qr & s hf of n e qr	33	99	40	240.00
	Patented all	1	98	41	639.00
	Patented all	3	98	41	646.84
	Patented all	5	98	41	654.42
	Patented all	7	98	41	612.42
	Patented all	9	98	41	640.00
	Patented all	11	98	41	640.00
	Patented all	13	98	41	640.00
	Patented all	15	98	41	640.00
	Patented all	17	98	41	640.00
	Patented all	19	98	41	612.00
	Patented all	21	98	41	640.00
	Patented all	23	98	41	640.00
	Patented all	25	98	41	640.00
	Patented s hf of s e qr	27	98	41	80.00
	Patented all	29	98	41	640.00
	Patented*a* all	31	98	41	635.26
	Patented all	33	98	41	640.00
	Patented all	35	98	41	640.00
	Patented s hf, s hf of n hf	31	98	41	472.19
	Patented s hf, s hf of n hf	33	99	41	480.00
	Patented s hf, s hf of n hf	35	99	41	480.00
	Patented all	1	98	42	662.18
	Patented all	3	98	42	665.74
	Patented all	5	98	42	669.72
	Patented e hf of e hf	7	98	42	160.00
	Patented all	9	98	42	640.00
	Patented all	13	98	42	640.00
	Patented all	17	98	42	640.00
	Patented e hf of e hf	19	98	42	160.00
	Patented all	21	98	42	640.00
	Patented all	23	98	42	640.00
	Patented all	25	98	42	640.00

Class No. One (1)—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented e hf	27	98	42	320.00
Patented n hf	29	98	42	320.00
Patented e hf of e hf	31	98	42	160.00
Patented all	33	98	42	640.00
Patented all	35	98	42	640.00
Patented e hf of s e qr & s e qr of n e qr	31	99	42	120.00
Patented s hf and s hf of n hf	33	99	42	480.00
Patented s hf and s hf of n hf	35	99	42	480.00
Patented s w qr of n w qr	7	97	40	36.50
Patented all	5	95	41	638.32
N hf of n hf	7	95	41	150.52
N e qr of n w qr	3	96	41	39.94
N e qr of n w qr	7	96	41	40.00
S e qr of n e qr	15	96	41	40.00
N e qr of s e qr	17	96	41	40.00
N w qr of n e qr	5	97	41	35.48
N e qr of s w qr	11	97	41	40.00
S w qr of n w qr	13	97	41	40.00
N w qr of n w qr	17	97	41	40.00
168 N w qr of s w qr	19	97	41	40.71
N e qr of s e qr and e hf of s w qr	35	97	41	120.00
All	1	95	42	642.26
N hf s w qr, n hf of s e qr	3	95	42	549.60
S w qr of s e qr, balance all	5	95	42	630.82
N e qr of n e qr	7	95	42	40.00
N hf of n hf	9	95	42	160.00
N hf of n hf	11	95	42	160.00
All	1	96	42	641.96
All	3	96	42	646.16
All	5	96	42	654.94
E hf of e hf	7	96	42	160.00
All	9	96	42	640.00
All	11	96	42	640.00
All	13	96	42	640.00
All	15	96	42	640.00
All	17	96	42	640.00
E hf of e hf	19	96	42	160.00
All	21	96	42	640.00
All	23	96	42	640.00
All	25	96	42	640.00
All	27	96	42	640.00
All	29	96	42	640.00
E hf of e hf	31	96	42	160.00
All	33	96	42	640.00

Class No. One (1)—Continued.

Description.	Section.	Town.	Range.	Acres.
All	35	96	42	640.00
All	1	97	42	607.22
All	3	97	42	595.60
All	5	97	42	590.40
E hf of e hf	7	97	42	160.00
All	9	97	42	640.00
All	13	97	42	640.00
All	17	97	42	640.00
E hf of e hf	19	97	42	160.00
All	23	97	42	640.00
All	25	97	42	640.00
All	27	97	42	640.00
S hf	29	97	42	320.00
E hf of e hf	31	97	42	160.00
All	33	97	42	640.00
All	35	97	42	640.00
				50,580.62

are a part and portion of the grants so made by said act of Congress and are within the overlapping limits of said grant and are all situated within the granted limits—that is, within ten miles of the definitely located line—of each of said railroads, and that said companies are jointly entitled to said lands, and that patents therefor should have been issued by the State of Iowa to the said companies jointly for all of said lands, but that by mistake all of said lands above marked as "patented" have been erroneously and wrongfully patented by the State solely to the defendant Sioux City and St. Paul Railroad Company, and that an undivided one-half interest in the lands so patented should be released by said defendant, Sioux City & St. Paul Railroad Company, to said complainant, and that the balance of said lands not patented by the State should be patented to said complainant and said defendant, Sioux City and St. Paul Railroad Com-any, jointly;

169 And it further appearing that the following-described lands, marked "class No. 2," to wit:

Class No. Two (2).

Lands within the ten-mile limits of the C., M. & St. P. R'y, but outside the ten-mile limits of the S. C. & St. P. R'y.

Description.	Section.	Town.	Range.	Acres.
Patented all	7	98	39	599.32
Patented all	9	98	39	640.00
Patented all	13	98	39	640.00
Patented all	15	98	39	640.00
Patented all	23	98	39	640.00
Patented all	25	98	39	640.00
Patented all	27	98	39	640.00
Patented all	31	98	39	602.92
Patented all	33	98	39	640.00
Patented s w *ar*	33	98	39	160.00
Patented all	25	98	40	640.00
Patented all	27	98	40	640.00
Patented all	33	98	40	640.00
Patented all	35	98	40	640.00
Patented all	3	98	39	643.14
Patented n hf and s e qr	5	98	39	482.66
Patented all	11	98	39	640.00
Patented w hf	19	98	39	280.68
Patented e hf	21	98	39	320.00
Patented s hf and s hf of n hf	31	99	39	446.93
Patented s e qr	33	99	39	160.00
Patented all	1	98	40	643.20
Patented n hf	13	98	40	320.00
Patented s hf	23	98	40	320.00
S hf	17	98	38	320.00
All	19	98	38	636.68
S hf	21	98	38	320.00
All	29	98	38	640.00
All	31	98	38	638.76
W hf of s w qr	7	96	39	62.25
N e qr of n e qr	7	97	39	40.00
All	1	95	40	698.22
All	3	95	40	675.28
All (n hf contracted for poor farm)	5	95	40	651.60
N hf of n hf	7	95	40	161.22
E hf and n hf of n w qr	9	95	40	400.00
All	11	95	40	640.00
All	13	95	40	640.00
E hf	15	95	40	320.00
E hf	23	95	40	320.00
All	1	96	40	599.88

Class No. Two (2)—(Continued).

	Description.	Section.	Town.	Range.	Acres.
	All	3	96	40	612.00
	All	5	96	40	626.24
	All	7	96	40	635.08
	All	9	96	40	640.00
	All	11	96	40	640.00
	All	13	96	40	640.00
	All	15	96	40	640.00
	All	17	96	40	640.00
170	All	19	96	40	636.48
	All	21	96	40	640.00
	All	23	96	40	640.00
	All	25	96	40	640.00
	All	27	96	40	640.00
	All	29	96	40	640.00
	All	31	96	40	641.02
	All	33	96	40	640.00
	All	35	96	40	640.00
	N hf of n e qr	1	97	40	61.44
	S w qr of s w qr & s e qr of s e qr	21	97	40	80.00
	N e qr	25	97	40	160.00
	N w qr of n w qr	35	97	40	40.00
	All	1	95	41	638.82
	All	3	95	41	641.48
	N hf of n hf	11	95	41	160.00
	N w qr of n e qr	25	97	41	40.00
					33,076.28

are a part and portion of said grants so made by said act of Congress to aid in the construction of a railroad from the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it should intersect the road running from Sioux City to the Minnesota State line in the county of O'Brien, in said State, and are situated wholly within the granted limits—that is, within ten miles of the definitely located line—of said complainant and not within the granted limits or within ten miles of the located line of the said defendant, Sioux City & St. Paul Railroad Company, and that the complainant is entitled thereto, and that patents should have been issued therefor to said complainant, but that by mistake all of said lands of said class 2 marked "patented" have been erroneously and wrongfully patented to the defendant Sioux City and St. Paul Railroad Compan-, and

that said last-named company should release said lands to said complainant, and that all the rest and residue of said lands of said class 2 not marked as patented should be patented to the said complainant by said State of Iowa; and it further appearing to said court that the following-described lands, marked "xlass No. three (3), to wit:

Class No. Three (3).

Lands within the ten-mile limits of the S. C. & St. P. R'y, but outside the ten-mile limits of the C., M. & St. P. R'y.

	Description.	Section.	Town.	Range.	Acres.
	Patented e hf s w qr and e hf of n w qr	5	99	39	592.23
	Patented all	7	99	39	596.76
	Patented w hf	9	99	39	320.00
	Patented all	17	99	39	640.00
	Patented all	19	99	39	594.00
	Patented s fr hf	9	100	39	214.10
	Patented all	15	100	39	640.00
	Patented e hf	17	100	39	320.00
	Patented s e qr	19	100	39	160.00
171	Patented s e qr, s hf of n e qr, and n hf of n w qr	29	100	39	320.00
	Patented s w qr of n e qr and lots No. 1 and 2	31	100	39	107.60
	Patented e hf s w qr and e hf of n w qr	33	100	39	550.65
	Patented all	29	100	40	640.00
	Patented n hf of n w qr	33	99	40	80.00
	Patented all frac	7	100	40	387.39
	Patented all	9	100	40	442.16
	Patented lots 1, 2, 3, 4, 8, and 9	11	100	40	239.72
	Patented s e qr	13	100	40	160.00
	Patented n w qr	15	100	40	160.00
	Patented n hf s e qr	17	100	40	480.00
	Patented n hf s e qr, n hf of n w qr	19	100	40	534.58
	Patented n w qr	21	100	40	160.00
	Patented w hf	27	100	40	320.00
	Patented s e qr	29	100	40	160.00
	Patented e hf s w *ar*, w hf *ef* n w	31	100	40	535.20
	Patented e hf	33	100	40	320.00
	S hf and s hf of n hf	7	95	41	451.29
	E hf of s e qr, s e qr of n e qr	7	95	42	120.00
	S hf and s hf of n hf	10	95	42	480.00
	S hf and s hf of n hf	11	95	42	480.00
	All	15	95	42	640.00
	All	17	95	42	640.00
	E hf of e hf	19	95	42	160.00

Class No Three (3)—Continued.

Description.	Section.	Town.	Range.	Acres.
All	21	95	42	640.00
Patented w hf of n w qr	5	99	39	89.81
Patented e hf	9	99	39	320.00
Patented s hf frac	7	100	39	283.22
Patented w hf	17	100	39	320.00
Patented n hf and s w qr	19	100	39	423.28
Patented all	21	100	39	640.00
Patented all	27	100	39	640.00
Patented n hf of n e qr, s hf of n w qr, and s w qr	29	100	39	320.00
Patented s fr hf, e hf of n e qr, and n w qr of n e qr	31	100	39	397.77
Patented w hf of n w and right of way	33	100	39	89.35
Patented all	1	99	40	675.96
Patented all	3	99	40	667.14
Patented all	5	99	40	656.34
Patented all	7	99	40	608.20
Patented all	11	99	----	640.00
Patented all	13	99	40	640.00
Patented all	17	99	40	608.20
Patented all	19	99	40	60.36
Patented all	21	99	40	640.00
Patented all	27	99	40	640 00
Patented n hf of n hf	31	99	40	48.74
Patented n hf of n e	33	99	40	80.00
Patented lots 5, 6, 7, 10, 11, & 12	11	100	40	240.00
Patented n hf and s w qr	13	100	40	480.00
Patented e hf and s w	15	100	40	480.00
Patented s w qr	17	100	40	160.00
Patentee s hf of s w qr	19	10	40	72.14
Patented e hf and s w qr	21	100	40	480.00
172 Patented all	23	100	40	640.00
Patented all	25	100	40	640.00
Patented e hf	27	100	40	320.00
Patented n hf and s w qr	29	100	40	480.00
Patented e hf of n w qr	31	100	40	80.00
Patented w hf	33	100	40	320.00
Patented all	35	100	40	640.00
Patented all	1	99	41	641.00
Patented all	3	99	41	633.28
Patented all	5	99	41	621.36
Patented all	7	99	41	611.70
Patented all	9	99	41	640.05
Patented all	11	99	41	640.00

Class No. Three (3)—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented all	13	99	41	640.00
Patented all	15	99	41	640.00
Patented all	17	99	41	640.00
Patented all	19	99	41	619.20
Patented all	21	99	41	640.00
Patented all	23	99	41	640.00
Patented all	25	99	41	640.00
Patented all	27	99	41	640.00
Patented all	29	99	41	640.00
Patented n hf of n hf	31	99	41	156.49
Patented n hf of n hf	33	99	41	160.00
Patented n hf of n hf	35	99	41	160.00
Patented all fr	7	100	41	384.14
Patented all fr	9	100	41	407.60
Patented all fr	11	100	41	406.42
Patented all	13	100	41	640.00
Patented all	15	100	41	640.00
Patented all	17	100	41	640.00
Patented all	19	100	41	598.60
Patented all	21	100	41	640.00
Patented all	23	100	41	640.00
Patented all	25	100	41	640.00
Patented all	27	100	41	640.00
Patented all	29	100	41	640.00
Patented all	31	100	41	607.16
Patented all	33	100	41	640.00
Patented all	35	100	41	640.00
Patented all	1	99	42	619.72
Patented all	3	99	42	628.48
Patented all	5	99	42	638.42
Patented e half of e hf	7	99	42	160.00
Patented all	9	99	42	640.00
Patented all	11	99	42	640.00
Patented all	13	99	42	640.00
Patented all	15	99	42	640.00
Patented all	17	99	42	640.00
Patented e hf of e hf	19	99	42	160.00
Patented all	21	99	42	640.00
Patented all	23	99	42	640.00
Patented all	25	99	42	640.00
Patented all	27	99	42	640.00
Patented all	29	99	42	640.00
Patented n e qr of n e qr	31	99	42	40.00
Patented n hf of n hf	33	99	42	160.00

Class No. Three (3)—Continued.

	Description.	Section.	Town.	Range.	Acres.
173	Patented n hf of n hf	35	99	42	160.00
	Patented all fr	9	100	42	110.66
	Patented all fr	11	100	42	409.78
	Patented all	13	100	42	640.00
	Patented all	15	100	42	640.00
	Patented all	17	100	42	640.00
	Patented e hf of e hf	19	100	42	160.00
	Patented all	21	100	42	640.00
	Patented all	23	100	42	640.00
	Patented all	25	100	42	640.00
	Patented all	27	100	42	640.00
	Patented all	29	100	42	640.00
	Patented e hf of e hf	31	100	42	160.00
	Patented all	33	100	42	640.00
	Patented all	35	100	42	640.00
					63,796.16

are a part and portion of the grant made by the act of Congress to aid in the construction of a railroad from Sioux City to the State line and are situated wholly within the granted limits—that is, within ten miles of the definitely located line—of said defendant, Sioux City and St. Paul Railroad Company, and not within the granted limits or within the ten miles of the located line of said complainant, and that said Sioux City & St. Paul Railroad Company is entitled thereto, and that all of said lands in said class 3 marked "patented" have been patented by the State of Iowa to said defendant compnay, and th-t said defendant compnay is entitled to a patent for all the residue of said lands contained in said class 3;

And it further appearing to said court that the following-described lands, marked "class No. four (4)," to wit:

Class No. Four (4).

Joint indemnity lands.

Description.	Section.	Town.	Range.	Acres.
All	25	95	42	640.00
All	27	95	42	640.00
All	29	95	42	640.00
E hf of n e qr	31	95	42	80.00
Patented all	3	98	38	640.00
Patented all	5	98	38	640.00
Patented n e qr of n w qr	7	98	38	40.00
Patented all	9	98	32	640.00
Patented all	11	98	38	640.00
Patented s hf, n e qr of n w qr, s hf of n w qr, s w of *o* n e qr	7	99	37	477.64
Patented n w qr of n e qr, n w qr of n w qr, s hf of n hf, and s hf	19	99	37	532.52
Patented s hf	31	100	37	317.17
Patented all	1	99	38	683.78
Patented e hf, w hf of n w qr, n hf of s w qr	3	99	38	513.78
Patented s e qr of n e qr, n w qr of n e qr, and s e qr	5	99	38	253.21
Patented all	9	99	38	640.00
Patented n e qr, s w qr, n of n w qr, n hf of s e qr, and s e qr of s e qr	11	99	38	520.00
Patented n e qr, s hf, e hf of n w qr, s w qr of n w qr	13	99	38	600.00
Patented all	15	99	38	640.00
174 S e qr of n e qr, n w qr of n w qr, s w qr, s hf of n w, n w qr of s e qr, and s hf of s e qr	7	98	38	427.42
All	15	98	38	640.00
N hf	17	98	38	320.00
S w qr of n e qr and n w qr	21	98	38	200.00
S hf and s hf of n hf	7	95	40	482.96
S hf of n w qr and s w qr	9	95	40	240.00
W hf	15	95	40	320.00
All	17	95	40	640.00
All	19	95	40	651.52
All	21	95	40	640.00
W hf	23	95	40	320.00
All	27	95	40	640.00
All	29	95	40	640.00
A hf and s hf of n hf	11	95	41	480.00
All	13	95	41	640.00

Class No. Four (4)—Continued.

Description.	Section.	Town.	Range.	Acres.
All	15	95	41	640.00
W hf	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
All	13	95	42	640.00
All	23	95	42	640.00
Patented s hf	19	99	38	311.35
Patented n hf, n hf of s w qr, s e qr of s w qr	21	99	38	440.00
Patented n hf, s w qr, n hf of s e qr, s e qr s e qr	23	99	38	600.00
Patented all	25	99	38	640.00
Patented n hf	27	99	38	320.00
Patented n w qr of n e qr, w hf of w hf	29	99	38	200.00
Patented n hf, s e qr, n hf of s w qr	31	99	38	548.21
Patented e hf & s w qr	33	99	38	480.00
Patented n hf, s e qr, s w qr of s e qr (less 1 acre)	35	99	38	519.00
Patented n e qr, w hf of n w qr, n e qr of n w qr	19	100	38	261.58
Patented all	1	98	39	643.16
Patented w hf and s e qr	1	99	39	506.25
Patented s e qr	11	99	39	160.00
Patented n w qr	21	99	39	160.00
Patented all	23	99	39	640.00
Patented all	29	99	39	640.00
Patented n hf of n hf	31	99	39	148.79
Patented all	35	99	39	640.00
Patented all	23	100	39	640.00
Patented n w qr and s w qr (less right of way)	25	100	39	313.75
Patented w hf	5	99	38	346.36
Patented all	7	99	38	612.72
Patented all	17	99	38	640.00
Patented n hf	19	99	38	310.91
Patented s e qr	21	99	38	160.00
Patented s hf	27	99	38	320.00
Patented s e qr and s e qr of n e	29	99	38	200.00
Patented n w qr	33	99	38	160.00
Patented school lot in	35	99	38	1.00
Patented s e qr	17	100	38	160.00
Patented s hf	19	100	38	304.74
175 Patented s hf	21	100	38	320.00

Class No. Four (4)—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented s hf, e hf of w hf, s w qr of n w.	27	100	38	520.00
Patented all	29	100	38	578.74
Patented all	31	100	38	609.32
Patented all	33	100	38	236.80
Patented n hf, s e qr, n hf of s w qr, and s w qr of s w qr	35	100	38	600.00
Patented n e qr	1	99	39	186.39
Patented all	3	99	39	689.52
Patented w hf and n e qr	11	99	39	480.00
Patented all	13	99	39	640.00
Patented all	15	99	39	640.00
Patented e hf and s w qr	21	99	39	480.00
Patented all	25	99	39	640.00
Patented all	27	99	39	640.00
Patented n hf	33	99	39	320.00
Patented s hf	13	100	39	320.00
Patented n e qr, s w qr, right of way in s e qr of s e qr	25	100	39	326.25
Patented all	35	100	39	640.00
Patented e hf of e h	7	100	42	102.26
				42,188.93

are a part and portion of said grants so made by said act of Congress and are within the overlapping limits of said grants and are situated wholly within the indemnity limits of both of said railroads and not within the granted or ten-mile limits of either, and that said lands belong to said companies jointly and should have been so patented to them, but that by mistake all of said lands above marked "patented" have been erroneously and wrongfully patented solely to the defendant Sioux City and St. Paul Railroad Company, and that an undivided one-half interest in the lands on class No. 4 so patented should be released by the said Sioux City and St. Paul Railroad Company to said complainant, and that the balance of said lands in said class No. 4 should be patented by the State of Iowa to said companies jointly; and it further appearing to said court that a portion of the lands of classes numbered 1, 2, and 4, so as aforesaid patented to the Sioux City and St. Paul Railroad Company, have — sold and disposed of to *bona fide* purchasers by the said defendant, Sioux City and St. Paul Railroad Company, and *that* the purchase-money therefor received by said company, and that said defendant, Sioux City and St. Paul Railroad Company, should account for the whole of the proceeds of class No. 2 and an undivided

one-half of the proceeds of classes Nos. 1 and 4 to the said complainant:

Now, therefore, on motion of John W. Cary, of counsel for complainant, it is ordered, adjudged, and decreed that all of said lands hereinbefore mentioned and described were, by said act of Congress, approved May 12, 1864, granted to the State of Iowa, in trust, to aid in the building of said railroad, and belong to said grants; that said complainant, Chicago, Milwaukee & St. Paul Railway Company, has fully complied with all the terms and conditions of said act of Congress granting said lands, so far as said lands were given to aid in the construction of a railroad from the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route, on or near the forty-third parallel of north
176 latitude, until it should intersect the road running from Sioux City to the Minnesota State line in the county of O'Brien, in said State, and with the act of the legislature of the State of Iowa, approved February 27th, 1878, conferring said grant upon the complainant, and has fully completed said railroads within the time specified in said act of Congress and said act of the legislature, and thereby has become entitled to receive all lands contained in said grant not heretofore granted by the State of Iowa to other parties and is now entitled to all said lands abo-e described as pertaining to said grant; and it is further ordered, adjudged, and decrecx that the said defendant, Sioux City and St. Paul Railroad Company, has fully complied with all the conditions of said act of Congress approved May 12, 1864, granting said lands in the State of Iowa to aid in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa might select between the Big Sioux and the west fork of the Des Moines river, and with the act of the legislature conferring said grant upon the said defendant, Sioux City and St. Paul Railroad Company, so far as relates to the lands in question, and fully completed the railroad, within the time specified in the said act of Congress and said act of the legislature, from the State line of the said State of Minnesota, in a southerly direction, to Le Mars, in the State of Iowa, a distance of fifty-six and $\frac{35}{100}$ miles, and is entitled to receive all the lands applicable to said grant from said State line of the State of Minnesota to the extent of ten sections per mile for each and every mile of road constructed, including all the lands hereinbefore described as belonging to that grant.

It is further ordered, adjudged, and decreed that the several pieces and parcels of land first above mentioned as class No. 1 are a part and portion of said grant so made by said act of Congress, and are within the overlapping limits of said grant—that is, within ten miles of the definitely located line of each of said railroads—and that said companies are jointly entitled to said lands, and that said State of Iowa or the proper officers thereof should of right make, execute, and deliver to the said complainant and the said defendant, Sioux City and St. Paul Railroad Company, jointly, patents for all of said lands in class No. 1 not heretofore patented.

And it is further ordered, adjudged, and decreed and this court

by virtue or the power therein vested doth order, adjudge, and decree that the complainant, The Chicago, Milwaukee and St. Paul Railway Company, and the defendant The Sioux City and St. Paul Railroad Company are each of them the owner of and entitled to and are hereby invested with the title in fee to an equal undivided one-half of all the lands described above in class No. one, save and except the right of way as excepted in said act of the General Assembly of the State of Iowa, approved February 27, 1878.

And it is further ordered, adjudged, and decreed that the said defendant, Sioux City & St. Paul Railroad Company, do release and convey to said complainant one equal undivided half of all of said lands in class No. 1, which have heretofore been patented to said defendant company by the State of Iowa and the title to which is now held by said defendant company, with covenants against their own acts, and free, released, and discharged from the lien of the mortgage deed of trust executed by said Sioux City & St. Paul Railroad Company to Elias F. Drake and Alexander H. Rice, as trustees.

And it is further ordered, adjudged, and decreed that the lien of said mortgage be, and the same hereby is, vacated, released,
177 and set aside as to the said one equal, one undivided half of said lands mentioned and described in said class No. 1.

It is further ordered, adjudged, and decreed that all the lands mentioned and described in class No. 2, above mentioned, are a part and portion of said grants so made by said act of Congress, and are situated wholly within the granted limits—that is, within ten miles of the definitely located line—of said complainant, and not within the granted limits or within ten miles of the located line of the said defendant, Sioux City and St. Paul Railroad Company, and that the complainant is entitled thereto, and that the State of Iowa or the proper officers of said State should of right make, execute, and deliver to the said complainant patents for all of said lands mentioned and described in said class No. 2 not heretofore patented.

And it is further ordered, adjudged, and decreed, and this court, by virtue of the power herein vested, doth order, adjudge, and decree, that the complainant herein, The Chicago, Milwaukee & St. Paul Railroad Co., is the owner of and entitled to and is hereby invested with the title in fee to the whole of the lands above mentioned and described as class No. 2, free and clear of all incumbrances made or placed thereon by the defendants or any or either of them.

And it is further ordered, adjudged, and decreed that the said defendants, Sioux City & St. Paul Railroad Company, release and convey to said plaintiff all said lands mentioned in class No. 2, which have heretofore been patented to said defendant by the State of Iowa, the title to which is now held by said defendant company, with covenants against their own acts, and free, released, and discharged from the lien of the mortgage deed of trust executed by said Sioux City & St. Paul Railroad Company to Elias F. Drake and Alexander H. Rice as trustees; and it is further ordered, adjudged, and decreed that the lien of said mortgage be, and the same hereby is, released,

vacated, and set aside as to all of said lands mentioned and described in said class No. 2.

It is further ordered, adjudged, and decreed that the several pieces and parcels of land mentioned and described in class No. 3, above mentioned, are a part and portion of said act of Congress, and are situated wholly wit-in the granted limits—that is, within ten miles of the definitely located line—of the said defendant, Sioux City and St. Paul Railroad Company, and not within the granted limits or within the ten miles of the located line of said complainant, and that the defendant Sioux City & St. Paul Railroad Company is entitled thereto, and that the State of Iowa or the proper officers of said State should of right make, execute, and deliver patents therefor to the said defendant, Sioux City and St. Paul -ailroad Company; and it is further ordered, adjudged, and decreed, and this court, by the virtue of the power therein ves-ed, doth order, adjudge, and decree, that the defendant Sioux City and St. Paul Railroad Company is the owner of and entitled to and is hereby vested with the title in fee to all of tha lands above mentione- and described in class No. 3.

It is further ordered, adjudged, and decreed that the severla pieces and parcels of land mentioned abd described in class No. 4, above mentioned, are a part and portion of said grant made by said act of Congress and are within the overlapping limits of said grant and are all situated within the indemnity limits—that is, within twenty miles of the de-initely located line of each of said railroads, and not within the ten-mile limits of either, and that — companies are jointly entitled to said lands, and that said State of Iowa or the proper officers thereof should of right make, execute, and deliver to the said complain-nt and the said defendant, Sioux City & St. Paul
178 Railroad Company, jointly, patents for all of said lands in class No. 4 not heretofore patented.

And it is further ordered, adjugged, and decreed, and this court, by virtue of the power therein vested, doth order, adjudge, and decree, that the complainant herein, The Chicago, Milwaukee & St. Paul Railway Company, and the defendant The Sioux City & St. Paul Railroad Company are jointly the owners of and entitled to and are each hereby invested with the title in fee to all of the lands above described as class No. 4; and it is further ordered, adjudged, and decreed that the said defendant, Sioux City & St. Paul Railroad Company, do release and convey to said complainant one equal undivided half of all of said lands mentioned in class No. 4 which have heretofore been patented to said defendant, Sioux City & St. Paul Railroad Company, by the State of Iowa, the title to which is now held by said defendant company, with covenants against their own acts and free, released, and discharged from the lien of the mortgage deed of trust executed by said defendants, Sioux City & St. Paul Railroad Company, to Elias F. Drake and Alexander H. Rice as trustees; and it is further ordered, adjudged, and decreed that the lien of said mortgage be, and the same is hereby, vacated, released, and set aside as to the said one equla undivided half of said lands mentioned and described in said class No. 4.

It is further ordered, adjudged, and decreed that the said defend-

ant, Sioux City & St. Paul Railroad Company, do account with the said complainant as to all the lands mentioned and described in classes No. 1, 2, and 4 heretofore patented to said company by the State of Iowa, the title of which is not now in said defendant, Sioux City & St. Paul Railroad Company, for the proceeds of such lands, and on such accounting being perfected that the said defendant, Sioux City & St. Paul Railroad Company, pay to the said complainant the whole amount of the proceeds of said lands in class No. 2 and one-half of the proceeds of all of said lands in classes No. 1 and 4.

And it appearing to the court that W. C. Hills, commissioner heretofore appointed to make partition of said lands, is absent from the State, and may continue so to an indefinite period of time, it is hereby ordered that P. T. Lomax be substituted in his seat; and it is further ordered, adjudged, and decreed that it be referred to P. T. Lomax, John A. Elliott, and Ed. R. Mason, as commissioners, to state said account and make report of their doings to this court; and it is further ordered, adjudged, and decreed that they also make a partition of all of said lands jointly held by said companies, the opinion of a majority of said commissioners to prevail on all disputed matters arising before them.

(Signed) J. M. LOVE, *Judge.*

Indorsement: 1481. Equity. Chi., Mil. & St. Paul R'y Co. *v.* Sioux City & St. Paul R. R. Co. Decree. Filed May 21, 1886. Ed. R. Mason, clerk.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court for said district, do hereby certify that the foregoing transcript contains a full, true, and complete copy of the decree in a certain cause pending in said court wherein The Chicago, Milwaukee and St. Paul Railroad Company is complainant and The Sioux City and St. Paul Railroad Company *et al.* are defendants, as full, true, and complete as the original of the same now remains on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office, in Des Moines, in said district, this 28th day of May, A. D. 1886.

E. R. MASON,
Clerk U. S. C. C., Southern District of Iowa. [SEAL.]

179 (Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

EXHIBIT 20.

Partition.

In the Circuit Court of the United States for the Northern District of Iowa, Central Division.

I, E. R. Mason, clerk of the said court for said district, do hereby certify that the transcript hereto attached contains full, true, and

complete copies of the commissioners' report of partition and order of confirmation in a certain cause in said court wherein The Chicago, Milwaukee & St. Paul Raioway Company is complainant and The Sioux City and St. Paul Railroad Company is defendant as full, true, and complete as the originals of the same now remain on file and of record in my office.

[SEAL.] In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office, in Des Moines, in said district, this 29th day of October, A. D. 1886.

E. R. MASON,
Clerk of U. S. C. C., Southern District of Iowa.

Circuit Court of the United States, District of Iowa.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.
vs.
THE SIOUX CITY & ST. PAUL RAILROAD CO. and Others.

To the judges of said court:

In pursuance of and obedi-nce to a decretal order in the above-entitled cause, dated on the 19th day of May, 1882, as modified by a subsequent decretal order made on the 21st day of May, 1886, by which the undersigned, P. T. Lomax, John A. Elliott, and Edward R. Mason, were appointed commissioners, among other things, to make a partition between the said complainant, Chicago, Milwaukee & St. Paul Railway Company, and The Sioux City and St. Paul Railroad Company of all the lands mentioned and described in said last-named decretal order as class No. 1 and as class No. 4, awarding to each of said companies an equal half thereof, we, the commissioners, do hereby respectfully report and return—

That having been first duly sworn and having severally taken the oath hereto annexed and having been attended by counsel of the respective parties, John W. Cary, Esq., appearing for the complainant, and J. H. Swan, Esq., appearing for the defendant The Sioux City & St. Paul Railroad Company, we have carefully considered the matters referred to us in said c-mmission and have satisfied ourselves of the condition and situation thereof.

1. We find and report that all the following pieces and parcels of land of said classes 1 and 4 of said decree herein particularly described in Schedule A had, prior to the making of said decree, on the 21st day of May, 1886, been sold and disposed of by the defendant The Sioux City & St. Paul Railroad Company and conveyances thereof made to actual purchasers, and that the complainant, Chicago, Milwaukee & St. Paul Railway Company, has assented thereto and had executed a conveyance ratifying and confirming said sales, and for that reason no partition of said lands in Schedule A has been made, to wit:

180 *List of Lands No. One* (1), *Schedule "A."*

Description.	Section.	Town.	Range.	Acres.
Patented all	3	98	40	641.98
Patented all	5	98	40	640.00
Patented all	7	98	40	601.82
Patented all	11	98	40	640.00
Patented all	17	98	40	640.00
Patented all	19	98	40	13.00
Patented all	21	98	40	640.00
Patented all	31	98	40	625.28
Patented s e qr, s hf of n e, s hf of n w qr	31	99	40	308.90
Patented se qr and s hf of n e qr	33	99	40	240.00
Patented all	1	99	40	639.00
Patented all	3	98	41	646.84
Patented all	5	98	41	654.42
Patented all	7	98	41	612.42
Patented all	9	98	41	640.00
Patented all	11	98	41	640.00
Patented all	13	98	41	640.00
Patented all	15	98	41	640.00
Patented all	17	98	41	640.00
Patented all	19	98	41	612.00
Patented all	21	98	41	640.00
Patented all	23	98	41	640.00
Patented all	25	98	41	640.00
Patented s hf of s e qr	27	98	41	80.00
Patented all	29	98	41	640.00
Patented all	31	98	41	635.26
Patented all	33	98	--	640.00
Patented all	35	98	41	640.00
Patented s hf and s hf of n hf	31	99	41	472.19
Patented s hf and s hf of n hf	33	99	41	480.00
Patented s hf and s hf of n hf	35	99	41	480.00
Patented all	1	98	42	663.18
Patented all	3	98	42	665.74
Patented all	5	98	42	669.72
Patented e hf of e hf	7	98	42	160.00
Patented all	9	98	42	640.00
Patented all	13	98	42	640.00
Patented all	17	98	42	640.00
Patented e hf of e hf	19	98	42	160.00
Patented all	21	98	42	640.00
Patented all	23	98	42	640.00
Patented all	25	98	42	640.00
Patented e hf	27	98	42	320.00
Patented e hf	29	98	42	320.00

List of Lands No. One (1), *Schedule "A"*—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented s hf of e hf	31	98	42	160.00
Patented al*o*	33	98	42	640.00
Patented all	35	98	42	640.00
Patented e hf of s e qr, s e qr of n e qr	31	99	42	120.00
Patented s hf and s hf of n hf	33	99	42	480.00
Patented s hf and s hf of n hf	35	99	42	480.00
N e qr of s e qr, e hf of s w	35	97	41	120.00
S hf	29	97	42	320.00
				27,702.33

Class one (1), Schedule "A."

181 *List of Lands in Class No. Four* (4), *Schedule "A."*

Description.	Section.	Town.	Range.	Acres.
Patented w h*d*	5	99	38	346.36
Patented all	17	99	38	612.72
Patented all	17	99	38	640.00
Patented n hf	9	99	38	310.91
Patented se qe	21	99	38	160.00
Patented s hf	27	99	38	320.00
Patented s e qr and s e qr of n e qr	29	99	38	200.00
Patented n w qr	33	99	38	160.00
Patented school lot in	35	99	38	1.00
Patented s w qr	17	100	38	160.00
Patented s hf	19	100	38	304.74
Patented s hf	21	100	38	320.00
Patented e hf e hf of w hf, s w qr of n w	27	100	38	520.00
Patented all	29	100	38	578.75
Patented all	31	100	38	609.32
Patented all	33	100	38	236.80
Patented n hf s e qr, n hf of s w qr, s w qr of s w	35	100	38	600.00
Patented n e qr	1	99	39	186.39
Patented all	3	99	39	689.52
Patented w hf and n e qr	11	99	39	480.00
Patented all	13	99	39	640.00
Patented all	15	99	39	640.00

List of Lands in Class No. Four (4), *Schedule "A"*—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented e hf and s w qr	21	99	39	480.00
Patented all	25	99	39	640.00
Patented all	27	99	39	640.00
Patented n hf	33	99	39	320.00
Patented s hf	13	100	39	320.00
Patented n e qr s w qr, right of way in s e q4 of s e qr	25	100	39	326.35
Patented all	35	100	39	640.00
Patented e hf of e hf	7	100	42	102.26
				12,-85.02

Class No. four (4), Schedule "A."

2nd. We further report that we have made partition of all the rest and residue of said lands described in classes No. 1 and No. 4 of said decree between said parties according to their respective rights and interests therein, as the same have been ascertained, declared, and determined by the said court, as we were by the said decretal order commandee. We divided the whole of said last-named premises into two lots, each of which allotment is, in our opinion, of equal value, and submitted said allotments to the respective counsel, who stated that they did not care to be further heard thereon, and that we have set off in severalty to the said complainant, Chicago, Milwaukee & St. Paul Railway Company, all those certain pieces and parcels of said premises designated and described as Schedule B, as follows, to wit:

List of Lands in Class No. One (1), *Schedule "B."*

Description.	Section.	Town.	Range.	Acres.
Patented s hf	9	98	40	320.00
Patented s hf of n w qr	33	98	40	80.00
Patneted s w qr	31	99	40	137.88
Patented s w qr	33	99	40	160.00
Patented n e qr, n hf of s e qr	27	98	41	240.00
Patented s hf p	3	95	42	80.00
182 E hf	5	95	41	319.68
(Ne qr of n w qr)	7	96	41	40.00

List of Lands in Class No. One (1), *Schedule "B"*—Continued.

Description.	Section.	Town.	Range.	Acres.
N e qr of s w qr	17	96	41	40.00
N w qr of n e qr	5	97	41	35.48
N e qr of s w qr	11	97	41	40.00
N w qr of n w qr	17	97	41	40.00
N w qr of s w qr	19	97	41	40.00
N hf s w qr, n hf of s e qr	3	95	42	549.60
N hf of n hf	11	95	42	160.00
All	1	96	42	641.96
N hf	5	96	42	334.94
E hf of n e qr	7	96	42	80.00
All	9	96	42	640.00
All	13	96	42	640.00
E hf	17	96	42	320.00
E hf of e hf	19	96	42	160.00
All	21	96	42	640.00
All	25	96	42	640.00
All	27	96	42	640.00
E hf of n e qr	31	96	42	80.00
All	35	96	42	640.00
All	1	97	42	607.20
All	5	97	42	590.40
E hf of e hf	7	97	42	160.00
All	13	97	42	640.00
All	23	97	42	640.00
All	27	97	42	640.00
N e qr of n e qr, s e qr of s e qr	31	97	42	80.00
N e q	33	97	42	320.00
				11,417.85

List of Lands in Class No. Four (4), *Schedule "B."*

Description.	Section.	Town.	Range.	Acres.
Patented s hf, s w qr of n e, s hf of n w qr, and n e qr of n w qr	7	99	37	477.64
Patented n w qr of n e qr, s hf of n e qr, n w qr, of n w qr & s hf of n w qr	19	99	37	226.79
Patented s hf	19	99	37	305.73
Patented all	3	98	38	640.00

List of Lands in Class No. Four (4), *Schedule "B"*—Continued.

	Description.	Section.	Town.	Range.	Acres.
	Patented all	9	98	38	640.00
	Patented all	1	99	38	683.78
	Patented n w qr of n e qr	5	99	38	53.21
	Patented n e qr, n hf of n w qr, s w qr, w hf of s e qr, n e qr of s e qr	11	99	38	520.00
	Patented s hf n e qr, s hf of n w qr, n e qr n w qr	13	99	38	600.00
	Patented s hf	19	99	38	311.35
	Patented n hf, n hf of s w, s e qr of s w qr	21	99	38	440.00
	Patented all	25	99	38	640.00
	Patented n w qr of n e qr	29	99	38	40.00
	Patented s e qr, n hf, n hf of s w qr	31	99	38	548.21
	Patented n e qr, e hf of s w qr	33	99	38	240.00
	Patented e hf	1	98	39	321.47
	Patented n w qr	21	99	39	160.00
	Patented n hf	23	99	39	320.00
	Patented n hf	29	99	39	640.00
183	Patented all	35	99	39	640.00
	Patented n w qr	25	100	39	160.00
					8,288.68

Class No. four (4), Schedule " B."

List of Lands in Class No. Four (4), *Schedule "B."*

Description.	Section.	Town.	Range.	Acres.
S w qr, n w qr of n w, s hf of n w, s e of n e, n w qr of s e, s hf of s e qr	7	98	38	427.42
N e qr	17	98	38	160.00
N w qr and s w qr of n e qr	21	98	38	200.00
S hf of n hf and s hf	7	98	40	483.96
W hf	15	95	40	320.00
All	17	95	40	640.00
All	19	95	40	651.52
All	21	95	40	640.00
W hf	23	95	40	320.00
All	27	95	40	640.00

List of Lands in Class No. Four (4), *Schedule "B"*—Continued.

Description.	Section.	Town.	Range.	Acres.
All	29	95	40	640.00
All	13	95	42	640.00
All	25	95	42	640.00
N hf	29	95	42	320.00
				15,011.58

Class No. four (4), Schedule "B."

And we have also set off in severalty to said Sioux City & St. Paul Railroad Company all those certain pieces and parcels of said premises designated and described as Schedule "C," as follows, to wit:

List of Lands in Class No. 1 (*One*), *Schedule "C."*

Description.	Section.	Town.	Range.	Acres.
S w qr n w qr	7	97	40	36.50
W hf	5	95	41	318.64
(N hf of n hf)	7	95	41	150.52
N e qr of n w qe	3	96	41	39.94
S e qr of n e qr	15	96	41	40.00
S w qr of s w qr	13	97	41	40.00
All	1	95	42	642.26
All	5	95	42	630.82
N e qr n e qr	7	95	42	40.00
N hf of n hf	9	95	42	150.00
All	3	96	42	646.16
S hf	5	96	42	320.00
E hf of s e	7	96	42	80.00
All	11	96	42	640.00
All	15	96	42	640.00
W hf	17	96	42	320.00
All	23	96	42	640.00
All	29	96	42	640.00
E hf of s e qr	31	96	42	80.00
All	33	96	42	640.00
All	3	97	42	595.60
(Right of way, 1.08 acres) all	9	97	42	638.92
(Right of way, 19.71 acres) all	17	97	42	620.29
(Right of way, 10.53 acres) e hf of e hf	19	97	42	149.47
All	25	97	42	640.00
S e qr of n e qr, n e qr of s e qr	31	97	42	80.00

List of Lands in Class No. 1 (*One*), *Schedule "C"*—Continued.

Description.	Section.	Town.	Range.	Acres.
184 S hf	33	97	42	320.00
All	35	97	42	640.00
(Patented) all	29	98	40	640.00
(Patented) s e qr of n w qr	7	96	41	40.00
(Patented w hf)	27	98	41	320.00
Total				11,429.12

Class No. one, Schedule C.

List of Lands in Class No. Four (4), *Schedule "C."*

Description.	Section.	Town.	Range.	Acres.
Patented s hf	31	100	37	317.17
Patented all	5	98	38	641.56
Patented n e qr of n w qr	7	98	38	40.00
Patented all	11	98	38	640.00
Patented n e qr, w hf of n w, n hf of s w, s e qr	3	99	38	513.78
Patented s e qr of n e qr	5	99	38	40.00
Patented s e qr	7	99	38	160.00
Patented all	9	99	38	640.00
Patented all	15	99	38	640.00
Patented n hf s w qr, n hf of s e, s e qr of s e qr	23	99	38	600.00
Patented n hf	27	99	38	320.00
Patented w hf of w hf	29	99	38	160.00
Patented s e qr and w hf of s w qr	33	99	38	240.00
Patented n hf s w qr, s w qr of s e qr	35	99	38	518.00
Patented n e qr, n hf of n w qr, s w qr of n w	19	100	38	261.58
Ppatented w hf	1	98	39	321.69
Patented n w qr and s hf	1	99	39	506.25
Patented s e qr	11	99	39	320.00
Patented s hf	23	99	39	320.00
Patented s hf	29	99	39	320.00
Patented n hf of n hf	31	99	39	148.79
Patented all	23	100	39	640.00
Patented s e qr	25	100	39	153.75
				8,302.57

List of Lands in Class No. Four (4), *Schedule "C."*

Description.	Section.	Town.	Range.	Acres.
All	15	98	38	640.00
N w qr	17	98	38	160.00
S hf of n w qr, s w qr	9	95	40	240.00
S hf of n hf and s hf	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W hf	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
All	23	95	42	640.00
All	27	95	42	640.00
S hf	29	95	42	320.00
E hf -f n e qr	31	95	42	80.00
Total				6,688.76

Class No. four (4), Schedule C, 14,991.33.

185 And we further certify and report that the items of the various expenses attending the execution of the said order, including our fees as commissioners, are contained in the schedule hereto annexed marked "D" and forming a part of this report.

In witness whereof we, the said commissioners, have set our hands to this our report this 25th day of October, in the year of our Lord one thousand eight hundred and eighty-six.

(Signed) P. T. LOMAX,
JOHN A. ELLIOTT,
E. R. MASON,
Commissioners.

STATE OF IOWA, *County of Polk,* } ss:

Be it remembered that on the 25th day of October, 1886, P. T. Lomax, John A. Elliott, and Edward R. Mason, to me known to be the persons who subscribed the foregoing report, appeared before me, the undersigned, and acknowledged the execution of the foregoing report, and that the same was their free act and deed for the uses and p-rposes therein mentioned.

(Signed) JOHN D. JORDAN,
[NOTARIAL SEAL.] *Notary Public, Polk County, Ia.*

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk. J. H. Bolton, depuyty.

EXHIBIT No. 21.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 26, 1887.

The Commissioners of the General Land Office.

SIR: In January last an application was filed in this department in behalf of certain settlers in O'Brien county, Iowa, asking that suit be commenced and prosecuted in the name of the United States to assert title to about 55,297.21 acres of land in said O'Brien county claimed by the Sioux City and St. Paul Railroad Company and the Chicago, Milwaukee and St. Paul Railway Company respectively under and by virtue of the grant to the State of Iowa by act of Congress approved May 12th, 1864 (13 Stat., 72).

Applicants aver that neither of the companies mentioned has earned the lands in question nor any of them; that they, the said applicants, are settlers upon said lands, and that they are seeking to acquire titles to the same under the settlement laws of the United States.

Section one of said act of 1864 enacts "That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines river-; also to said State, for the use and benefit
186 of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it shall in-ersect the said road running from Sioux City to the Minnesota State line in the county of O'Brien, in said State, every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road; but in case it shall appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid from the public lands of the United States nearest to the tiers of sections above specified so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached as aforesaid; which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid: Provided that the lands so selected shall in no case be located more than twenty miles from the lines of said roads: Provided, further, that

any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever be, and the same are hereby, reserved and excepted from the operation of this act except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted subject to the approval of the President of the United States."

Section four enacts—

"That the lands hereby granted shall be disposed of by said State for the purposes aforesaid only and in manner following, namely: When the governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial, and workmanlike manner as a first-class railroad, then the Secretary of the Interior shall issue to the State patents for one hundred sections of land for the benefit of the road having completed the ten consecutive miles as aforesaid. When the governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner for a like number, and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are from time to time made as aforesaid additional sections of land shall be patented as aforesaid until saids roads or either of them are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other:

Provided that if the said McGregor Western Railroad Company or assigns shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in its act, then the State may resume said grant and so dispose of the same as to secure the completion of a road on said line and upon such terms — within such time as
187 the State shall determine: Provided, further, that if the said roads are not completed within ten years from their several acceptance of this grant the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of said roada within such time, not to exceed five years, and upon such terms as the State shall determine: And provided, further, that said lands shall not in any manner be disposed of or incumbered except as the same are patented under the provisions of this act; and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States."

The State of Iowa, by an act of its legislature approved April 3, 1866 (Session Laws, 1866, chapter 134), accepted the grant of 1864 and conferred upon the Sioux City and St. Paul Railroad Company, a body corporate existing under and by virtue of the State of Iowa, so much of the grant by Congress as related to a line of road from Sioux City to the south line of the State of Minnesota. April 20, 1866, another act of the legislatu-e was approved, reiterating the

acceptance by the State of the grant of Congress and announcing that any lands patented to the State under the provisions of the act of Congress would be held by it in trust for the benefit of the railroad company entitled thereto and should be passed to such company "as shall be ordered by the legislature." (Session Laws, 1866, chapter 144.)

September 19, 1866, the Sioux City & St. Paul Railroad Company accepted the grant, and in July, 1867, filed in this department a map showing the line of its road as definitely located from Sioux City to a point in sec. 12, T. 100 N., R. 41 W., on the south line of Minnesota. Said line of road as located is eighty-three miles and fifty-two rods in length. The map thus filed was accepted by this department as the "basis for the adjustment of the land grant." August 26, 1867, the Commissioner of the General Land Office withdrew from the market the odd-numbered sections within the ten and twenty miles limits of the line of the road.

The Sioux City Company begun at the Minnesota State line to construct its road and built south toward Sioux City.

July 26th, 1872, the governor of the State of Iowa certified, as provided in the fourth section of the act of Congress making the grant, that two sections of ten miles each of the road had been constructed, as required by said act.

August 10, 1872, he certified in like manner to the completion of another section of ten miles, and on February 4, 1873, he certified to the completion of two more sections of ten miles each, making in all fifty miles of road completed and certified as required.

Prior to January 1, 1873, the company had constructed a continuous line of road from the Minnesota State line to Le Mars, a distance of fifty-six and a quarter miles, and a map of constructed road for the distance named was certified by the governor February 4, 1873, and filed in this department July 10, 1873. Patents were issued to the State for the benefit of the Sioux City & St. Paul Railroad Company as follows:

October 1, 1872, for list embracing	191,464.04 acres.
June 17, 1873, for list embracing	205,374.76 acres.
January 25, 1875, for list embracing	10,911.41 acres.
June 4, 1877, for list embracing	160.00 acres.
Total	407,910.21 acres.

Of this amount it appears that forty acres were patented twice. The quantity actually patented to the State was therefore forty acres less than the above footing makes it appear, or 407,870.21 188 acres. Of the land so patented, it appears 212,067.66 acres are within the ten miles, or granted limits, and 195,842.55 were patented as indemnity.

As only five sections of ten miles each of the road had been certified by the governor as completed, the maximum amount for which, under section four of the granting act, authority was given to issue patents to the State was 320,000 acres; 407,910.21 less

320,000 leaves 87,910.21 patented inadvertently and without authority of law.

March 13, 1874, the Iowa legislature passed an act authorizing the governor to certify to the Sioux City Company all the lands then held in trust for the benefit of the said company. (Laws of Iowa, 1874, chapter 34.)

The States passed title to the railroad company for all of the 407,910.21 acres, except 85,457.40 acres which it withheld and which have never been certified to the company, though it still claims title to them or to such of them as have not by the decision of the Supreme Court of the United States (117 U. S., 406) been awarded to the Chicago, Milwaukee & St. Paul Railway Company.

The Chicago, Milwaukee & St. Paul Railway Company, having, by legislation of the State of Iowa, become the successor of the McGregor Western Railroad Company as beneficiary under the grant of Congress made by the act of 1864 (the same act under which the Sioux City Company claims), completed its line of road to a point of intersection with the line of the Sioux City Company at Sheldon, in O'Brien county.

The act of 1864 required that the point of intersection of the two roads named therein should be in O'Brien county.

For the sake of brevity the Sioux City and St. Paul Railroad Company will be referred to in the further discussion of this case as the Sioux City Company and the Chicago, Milwaukee & St. Paul Railway Company as the Milwaukee Company.

The limits of the two lines were thus made to overlap for a considerable distance. The lands in said overlapping limits became the subject of c-ntroversy between the Milwaukee Company and the Sioux City Company, the first named claiming that there were in the overlapping limits of the two roads 189,184.50 acres which had been mistakenly patented to the State of Iowa for the benefit of the Sioux City Company and which should have been patented for the benefit of the Milwaukee Company; that of the said 189,184.50 acres thus wrongfully and mistakenly patented to the State 112,280.08 acres had been wrongfully and mistakenly certified by the governor of Iowa to the Sioux City Company.

The Milwaukee Company, complainant, asked that this patent fr-m the United States and the conveyance from the State to the Sioux City Company *to* be cancelled and set aside, so far as the same conveyed any title to the defendant company, and that it (the complainant) should recover the lands. The case finally came before the Supreme Court of the United States on cross-appeals, neither company being satisfied with the decree of the circuit court, which had awarded to each one undivided half of the lands in dispute.

The Supreme Court, under date of March 29th, 1886 (117 U. S., 406), after stating that the quantity of lands within the overlapping limits of the two roads was, as shown by the record, 189,595.24 acres, decided that they should be awarded as follows:

Lands within the common granted and common indemnity limits, to each company an undivided half; lands within the granted

limits of the Milwaukee road and within the indemnity
189 limits of the Sioux City *City* road, all to the Milwaukee Co.; lands within the granted limits of the Sioux City road and within the indemnity limits of the Milwaukee road, all to the Sioux City Company.

The circuit court was instructed to render decree accordingly, which it subsequently did. The effect of the decree was to dispose of the 189,595.24 acres by awarding to the Sioux City Co. 110,159.94 acres and to the Milwaukee Company 79,435.41 acres.

In the meantime, while the suit was pending in the courts, the Iowa legislature passed an act, approved March 16, 1882, resuming all the lands and rights conferred upon the Sioux City Company by the act of Congress of May 12th, 1864, which had not theretofore been earned by said company (Laws of 1882, chap. 107).

March 27, 1884, another act of the legislature was approved, which, by its *firts* section, relinquished and conveyed to the United States the lands resumed and intended to be resumed by the act of 1882 (*supra*), and by its second section it provided for the certification by the governor to the Secretary of the Interior of all lands which had been patented to the State, but which had not by the State been patented to the Sioux City Company; but nothing in said act was to be construed as applying to lands situated in the counties of Dickinson and O'Brien. Said act also provided that the list of lands so certified by the governor should be presumed to be the lands relinquished and conveyed by the first section thereof (Iowa Laws of 1884, chapter 71).

January 12, 1887, the governor of Iowa duly certified to this department, in accordance with the act of the *l*egislature above mentioned, a list of lands which had been patented to the State, but which had not by the State been transferred to the Sioux City Company. Said list embraces 26,017.33 acres in the counties of Plymouth, Sioux, and Woodbury, and is now before me fo- conside-ation and action, but is not involved in the matter now being considered.

The Iowa legislature authorizing the certification as above followed and apparently was the result of a suggestion made by my predecessor, Secretary Teller, in a communication addressed by him to the *the* governor of Iowa under date of February 6, 1883. In that letter, after reciting certain facts relative to the granting act of 1864 and to the lands patented to the State thereunder, he used the following language:

"If there is no authority vested in you or any of the officers of the State to revest the United States with the legal title to the unearned lands, I urge upon you the propriety of obtaining authority from the General Assembly as early as possible in order that such lands may be restored to the public domain.

"Unless some early action is taken looking to that end, it would become the duty of this department to recommend a resort to legal proceedings for the restoration of such lands to the General Government."

As has already been stated, the amount of land patented by the United States to the State for the benefit of the Sioux City Co. was

407,910.21 acres, all of which was by the State certified to the Sioux City Company except 85,457.40 acres, which the State withheld, deducting from the last-named amount the 26,017.33 acres certified by the governor back to the United States, and we have left 59,440.07 acres not certified or patented to the Sioux City Company, the beneficiary named in the patent to the State.

Of the last-named quantity 37,747.89 acres were awarded to the Milwaukee Company under the Supreme Court decision (*supra*), but are nevertheless embraced in this application for suit. It here becomes necessary to inquire how many acres of the 322,452.81 acres certified to the Sioux City Company by the State were by said Supreme Court decision and the decree of the circuit court made
190 pursuant thereto taken from said company and given to the Milwaukee Company by the partition made under said decree. Within the common ten-miles limits of the two roads were 50,539.73 acres patented to the State for the Sioux City Company.

Of this quantity there had been patented to the company	29,280.13 acres.
Withheld by the State	21,259.60 acres.
As the Milwaukee was awarded one-half of each of these quantities, it received of lands patented to Sioux City Company	14,640.06 acres.
Of lands not patented to Sioux City Company	10,629.80 acres.
Total	25,269.86 acres.

Within the common indemnity limits of the two roads were 42,188.93 acres which had been patented to the State for the Sioux City Company.

Of this there had been patented to the company	28,777.27 acres.
Withheld by the State	13,411.66 acres.
As the Milwaukee Company was awarded one-half of each of these quantities, it received of lands patented to Sioux City Company	14,388.63 acres.
Of lands not patented to Sioux City Company	6,705.83 acres.
Total	21,094.46 acres.

Within the ten-miles limits of the Milwaukee road, but within the indemnity limits of the Sioux City road, were 33,071.08 acres which had been patented to the State for the Sioux City Company.

Of this there had been patented to the company	12,658.83 acres.
Withheld by the State	20,412.25 acres.
These added make	33,071.08 acres.

All of which was awarded to the Milwaukee Company.

Within the ten-miles limits of the Sioux City road, but within

the indemnity limits of the Milwaukee road, were 63,796.24 acres which had been patented to the State for the Sioux City Company.

Of this there had been patented to the company	60,184.75 acres.
Withheld by the State	3,611.49 acres.
These added make	63,796.24 acres.

All of which was awarded to the Sioux City Company.

From the foregoing it appears that of lands which had been patented to the Sioux City Company there were awarded under the decision of the Supreme Court to the Milwaukee Company:

Lands in granted limits of Sioux City road		14,640.06 acres.
Lands in indemnity limits of Sioux City road	14,388.63 12,658.83	
		27,047.46 acres.
		41,687.52 acres.

The total award to the Milwaukee Company under the Supreme Court decision was 79,435.41 acres, 41,687.52 acres of which, as above shown, had been patented to the Sioux City Company. Deducting the last-named amount from the total award, we have left as the amount of land patented to the State for the Sioux City Company, but not by the State patented to the company, 37,747.89 acres. The quantity of land which the Sioux City Company since the
191 Supreme Court decision referred to holds under patents from the State may now be readily ascertained:

There were patented to the State for the benefit of the company, deducting 40 acres twice patented	407,870.21	acres.
Of this the State withheld	85,457.40	acres.
Amounted patented to company	322,412.81	acres.
Of this awarded to Milwaukee Company, as above shown	41,687.52	acres.
Still held by company under patents from State	280,725.29	acres.

The next question suggested is: To what amount of land is the Sioux City Company entitled under the grant act of Congress? Is it entitled to patents for any portion of the 85,457.40 acres withheld from it by the State? As I understand it, the applicants for suit are asking the United States to recover 55,297.21 acres in O'Brien county, which amount constitutes a part of 85,457.40 acres above mentioned as withheld by the State.

It is claimed generally in behalf of applicants that so far as the Sioux City Company is concerned it has already received more lands than it has earned, and that if this were not true the line of con-

structed road so deflect- from the line of definite location that the company cannot lawfully assert a right to patent for the lands in question; also that the company, having failed to complete its entire line of road, has no legal or equitable title to these lands as against the United States or the settlers.

The company claims that it has earned and is entitled under the grant to 6,400 acres per mile for the fifty-six and a quarter miles of road constructed, which would be 360,000 acres, and that after deducting from the lands patented for its benefit the amount decreed by the Supreme Court to the Milwaukee Company there would remain a deficit of 31,525.20 acres which it has earned, but which it cannot get out of all the lands patented to the State for its benefit.

As to the charge of deflection from the line of location, the department, with the facts before it and in the exercise of its deisc-etion, passed upon the question years ago. By accepting the road, adjusting the grant, and issuing patents on account thereof it then determined that the line of constructed road was substantially upon the line of definite location. The question could not then be avoided. It belonged solely to the Secretary of the Interior to determine said question, which was one largely within the discretion of the Secretary (16 O., p. 457).

I find in the case no sufficient reason for reopening and further considering that question. As to the charge that the company *fia*led to complete the entire line of road and the claim that it has therefore no legal or equitable title to these lands, there can, I think, be no doubt that the company has earned and is entitled to its grant for the fifty miles of road constructed and certified in accordance with section four of the grant act. Railroad *v.* Courtright (21 Wall., 310); Van Wyck *v.* Knevals (106 U. S., 360, 368). It was entitled, under section four of the grantin- act, to patents for every ten miles completed and properly certified as soon as such section of ten miles was so completed and certified.

This brings me to the question, How much land has the com*pnay* earned, and is it entitled under the grant to the lands in question or any of them?

The records of the General Land Office show that there are within the common granted limits of the two roads 70,345.67 acres, one-half of which, as grant in place, would go to each company. That would give to each company 35,172.83 acres within the common ten-miles or granted limits.

192 It is strenuously urged, however, by both companies that they are each entitled to indemnity for the lands thus lost by grant to the other.

I am unable to conclude that such was the intention of Congres- in making the grant. To say that it was would be to say in effect that, in so far as the ten-miles limits of the two grants overlap, the purpose of the granting act was to make what would amount to a double grant. Each company got a moiety of the lands in odd-numbered sections within the common granted limits. Now, should there be allowed to each company indemnity for the moiety lost by grant to the other a quantity of land equivalent to all the odd and

even numbered sections in said common granted limits would be passed under the granting act.

This, I think, could not be justified by any proper construction of the act, nor can I conceive it to have been intended by Congress.

The grant was of a moiety for each road within the common granted limits of both road-. This accords with the view expressed by the Supreme Court in the case of St. Paul & Sioux City R. R. Co. vs. Winona & St. Peter R. R. Co. (112 U. S., 720).

Either this is true or Congress by the same act twice granted the same lands. To say that it did or intended to do this would be to say that it acted unreasonably or without a proper understanding of what it was doing. Now, since indemnity is allowed only for lands granted and lost from the grant, and since in the common ten-miles limits of these two roads only a moiety was granted, it follows that neither company has any legal claim for indemnity on account of the moiety granted to the other. Again, it is argued in behalf of the Sioux City Company that it has earned and is entitled to its grant for the full fifty-six and a quarter miles of road constructed—that is, for the six and a quarter miles as well as for the five sections of ten miles each.

After a careful consideration of the granting act I cannot concede the correctness of this proposition. Under the provisions of the fourth section of the act (which section has been quoted in full herein) it is clear that there is no authority for patenting lands under this grant except upon certificate of the governor of the State to this department that ten consecutive miles of road have been completed in a good, substantial, and workmanlike manner. The only exception to the manner of disposing of the lands, as above indicated, is that which may apply when the road is completed. The statute would seem to provide for the disposition of the lands for a fractional part of ten miles in that case, for it says that the whole of the land granted shall be then patented.

This road has not been completed, but stops at Le Mars, about twenty-six miles short of the point (Sioux City) to which under the grant it should have been constructed. The reasons given for not completing the road certainly furnish no reason for disposing of the public lands otherwise than in conformity with the law.

The company stopped the building of its uncompleted road with a full knowledge of the requirements of the granting act as to the conditions on which — could get the lands. It is not therefore in position to complain because it cannot get lands for the six and a quarter miles of road in question, and must accept the legal consequence of its own act. The company has therefore practically conceded its want of title or valid claim to lands on account of the six and a quarter miles of road, for it has been to Congress asking for legislation which would give it the lands for said six and a quarter miles and it opposed a bill which proposed to refer the
questions relative to the status of said lands to the courts for
193 judicial determination. See Report No. 45, Senate Committee
on Public Lands, Forty-ninth Congress, first session, copy in
the record.

From the foregoing the following conclusions result as to the grant for the benefit of the Sioux City Company:

A full grant to it for the five sections of ten miles each, or fifty miles of road in a direct line, would be 320,000 acres.

Deducting from this the one-half of the land in the common granted limits granted for the benefit of the Milwaukee Company, viz., 35,172.83 acres, and there remain as enuring to the Sioux City Company under the grant, at the most, 284,827.17 acres. It has already been shown that said company now holds by patent under the grant 280,725.29 acres.

The most that it can be said to be entitled to is 284,827.17 acres less 280,725.29 acres, or 4,101.88 acres, to be gotten out of the 85,457.40 acres withheld by the State; but of this 85,457.40 acres the State has reconveyed to the United States 26,017.33 acres, and the supreme court has awarded to the Milwaukee Company 37,747.89 acres. After deducting these quantities there remain to the State by patent form the United States 21,692.18 acres from which to get the 4,101.88 acres which appear to be still due the company as earned lands under the grant. The difference between these two quantities is 17,590.30 acres, which amount of land the State holds by patent for the company, to which the company is not entitled and for the recovery of which, in my judgment, suit should be brought.

Very respectfully, L. Q. C. LAMAR, *Secretary.*

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

EXHIBIT No. 24.

S. S. K. W. C. C. DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, WASHINGTON, D. C., *Feb.* 17, 1890. S. S. M. W. C. E.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands showing the odd-numbered sections and parts of sections and the areas thereof, lying within the conflicting ten-mile limits of the grants to the State of Iowa by the act of May 12, 1864, to aid in the construction of the Sioux City and St. Paul and Chicago, Milwaukee and St. Paul railroads, according to the diagram prepared by the office, after an accurete measurement, and showing the corrected limits of the grants, is a true and literal exemplification from the original prepared by and now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written. [SEAL.]

LEWIS A. GROFF,
Commissioner of the Gen. Land Office.

194 Parts of sections.	S.	T.	R.	Area.
S ½ n e, s ½ n w, & s ½	31	99	40	446.72
S ½ n e, s ½ n w, & s ½	33	99	40	480
S ½ n e, s ½ n w, & s ½	35	99	40	480
S ½ n e, s ½ n w, & s ½	31	99	41	472.19
S ½ n e, s ½ n w, & s ½	33	99	41	480
S ½ n e, s ½ n w, & s ½	35	99	41	480
S ½ n e, s ½ n w, & s ½	33	99	42	480
S ½ n e, s ½ n w, & s ½	35	99	42	480
N w n w	1	98	40	40.65
All	3	98	40	641.98
All	5	98	40	640.98
All	7	98	40	601.82
All	9	98	40	640.00
N e n w & w ½ n w	11	98	40	120
N w n e, n w s w, & n w ¼	15	98	40	240.00
All	17	98	40	640.00
All	19	98	40	613.60
W ½ n e, n w ¼, n ½ s w, s w s w	21	98	40	360
All except e ½ s e	29	98	40	560.00
All	31	98	40	625.28
All	1	98	41	639
All	3	98	41	646.84
All	5	98	40	654.42
All	7	98	40	612.42
All	9	98	40	640
All	11	98	40	640
All	13	98	40	640
All	15	98	40	640.00
All	17	98	40	640
All	19	98	40	612
All	21	98	40	640
All	23	98	40	640
All	25	98	40	640
All	27	98	40	640
All	29	98	40	640
All	31	98	40	635.26
				19,723.16
		N.	W.	
All	33	98	41	640
All	35	98	41	640
All	1	98	42	662.18
All	3	98	42	665.74
All	5	98	42	669.72
All	9	98	42	640
All	11	98	42	640

Parts of sections.	S.	T.	R.	Area.
All	13	98	42	640
All	15	98	42	640.00
All	17	98	42	640.00
All	21	98	42	640.00
All	23	98	42	640.00
All	25	98	42	640.00
All	27	98	42	640.00
All	29	98	42	640.00
All	33	98	42	640.00
All	35	98	42	640.00
N w ¼, n ½ s w, & s w s w	7	97	40	266.40
All	1	97	41	639.36
All	3	97	41	631.12
All	5	97	41	621.48
All	7	97	41	645.00
195 All	9	97	41	640.00
All	11	97	41	640.00
All except s e s e	13	97	41	600.00
All	15	97	41	640.00
All	17	97	41	640.00
All	19	97	41	642.76
All	21	97	41	640.00
All	23	97	41	640.00
W ½ n w & n w s w	25	97	41	120
All	27	97	41	640.00
All	29	97	41	640.00
All	31	97	41	624.80
All	33	97	41	640.00
All except e ½ s e	35	97	41	560.00
				41,791.72
		N.	W.	
All	1	97	42	607.30
All	3	97	42	595.60
All	5	97	42	590.40
All	9	97	42	640.00
All	11	97	42	640.00
All	13	97	42	640.00
All	15	97	42	640.00
All	17	97	42	640.00
All	21	97	42	640.00
All	23	97	42	640.00
All	25	97	42	640.00
All	27	97	42	640.00
All	29	97	42	640.00
All	33	97	42	640.00

Parts of sections.	S.	T.	R.	Area.
All	35	97	42	640.00
All	3	96	41	639.58
All	5	96	41	643.96
All	7	96	41	616.56
All	9	96	41	640.00
W ½ n w ¼	10	96	41	80.00
W ½ n e, n w s e, & w ½	15	96	41	440.00
All	17	96	41	640.00
All	19	96	41	606.84
All	21	96	41	640.00
All	29	96	41	640.00
All	31	96	41	613.12
N ½ n w, s w n w, & nw s w	33	96	41	160.00
All	1	96	42	641.96
All	3	96	42	646.16
All	5	96	42	654.94
All	9	96	42	640.00
All	11	96	42	640.00
All	13	96	42	640.00
All	15	96	42	640.00
All	17	96	42	640.00
All	21	96	42	640.00
All	23	96	42	640.00
				64,048.14
		N.	W.	
All	25	96	42	640.00
All	27	96	42	640.00
All	29	96	42	640.00
All	33	96	42	640.00
All	35	96	42	640.00
196 N w n e, n w ¼, & n w s w	5	95	41	238.35
N w n e & n ½ n w	7	95	41	110.51
All	1	95	42	641.36
All	3	95	42	629.60
All	5	95	42	638.02
N ½ n e & n ½ n w	9	95	42	160.00
N ½ n e & n ½ n w	11	95	42	160.00
				69,825.99

(Endorsed :) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

EXHIBIT 25.

H. DEPARTMENT OF THE INTERIOR, S. S. W.
GENERAL LAND OFFICE, W. C. E.
WASHINGTON, D. C., *Feb.* 17, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands showing the odd-numbered sections and parts of sections and the areas thereof within the ten-mile limits of the grant to the State of Iowa by act of May 12, 1862, for the Sioux City and St. Paul Railroad Company and outside the conflicting limits with the grant to the Chicago, Milwaukee and St. Paul Railroad Company according to the diagram prepared by this office after an accurate measurement and showing the correct limits of the grant is a true and literal exemplification from the original prepared by and now on file in this office.

In testimony whereof I have hereunt- subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

Parts of sections.	S.	T.	R.	Area.
		N.	W.	
All	7	100	39	445.64
All	9	100	39	356.13
W ½ n e, w ½ s e, & w ½	15	100	39	480.00
All	17	100	39	640.00
All	19	100	39	585.28
All	21	100	39	640.00
W ½ n e & w ½	27	100	39	400
All	29	100	39	640.00
All	31	100	39	505.37
All	33	100	39	640.00
All	7	100	40	387.39
All	9	100	40	442.16
All	11	100	40	479.72
All	13	100	40	640.00
All	15	100	40	640.00
All	17	100	40	640.00
All	19	100	40	606.72
197 All	21	100	40	640.00
All	23	100	40	640.00
All	25	100	40	640.00
All	27	100	40	640.00
All	29	100	40	640.00
All	31	100	40	615.20

Parts of sections.	S.	T.	R.	Area.
All	33	100 N.	40 W.	640.00
All	35	100	40	640.00
All	7	100	41	384.14
All	9	100	41	407.60
All	11	100	41	406.72
All	13	100	41	640.00
All	15	100	41	640.00
All	17	100	41	640.00
All	19	100	41	598.60
All	21	100	41	640.00
All	25	100	41	640.00
All	27	100	41	640.00
All	29	100	41	640.00
All	31	100	41	607.16
All	33	100	41	640.00
All	35	100	41	640.00
N e ¼, s e ¼, e ½ n w ¼, e ½ s w, & s w s w	7	100	42	325.65
All	9	100	42	410.66
All	11	100	42	409.78
All	13	100	42	640.00
All	15	100	42	640.00
All	17	100	42	640.00
All	19	100	42	628.00
All	21	100	42	640.00
All	23	100	42	640.00
All	25	100	42	640.00
All	27	100	42	640.00
All	29	100	42	640.00
All	31	100	42	640.00
All	33	100	42	640.00
All	35	100	42	640.00
N e ne, s ½ n e, e ½ s w, & s e ¼	13	100	43	360.00
S e ne & s e ¼	23	100	43	200.00
All	25	100	43	640.00
S e se	27	100	43	40.00
All	35	100	43	640.00
W n w	3	99	39	89.81
All	5	99	39	682.04
All	7	99	39	596.76
W ½ n e & w ½	9	99	39	400
All except s e se	17	99	39	600.00
All	19	99	39	594.00
All	1	99	40	675.96
All	3	99	40	667.14
All	5	99	40	656.34

Parts of sections.	S.	T.	R.	Area.
All	7	99	40	608.20
All	9	99	40	640.00
All	11	99	40	640.00
All	13	99	40	640.00
All	15	99	40	640.00
All	17	99	40	640.00
All	19	99	40	601.36
		N.	W.	
198 All	21	99	40	640.00
All	23	99	40	640.00
All	25	99	40	640.00
All	27	99	40	640.00
All	29	99	40	640.00
N ½ n e and n ½ n w	31	99	40	148.82
N ½ n e and n ½ n w	33	99	40	160.00
N ½ n e and n ½ n w	35	99	40	160.00
All	1	99	41	641.60
All	3	99	41	633.28
All	5	99	41	621.36
All	7	99	41	611.76
Al-	9	99	41	640.00
All	11	99	41	640.00
All	13	99	41	640.00
All	15	99	41	640.00
All	17	99	41	640.00
All	19	99	41	640.00
All	21	99	41	640.00
All	23	99	41	640.00
All	25	99	41	640.00
All	27	99	41	640.00
All	29	99	41	640.00
N ½ n e & n ½ n w	31	99	41	156.49
N ½ n e & n ½ n w	33	99	41	160.00
N ½ n e & n ½ n w	35	99	41	160
All	1	99	42	619.72
All	3	99	42	628.48
All	5	99	42	638.42
All	7	99	42	629.34
All	9	99	42	640.00
All	1o	99	42	640.00
All	13	99	42	640.00
All	15	99	42	640.00
All	17	99	42	640.00
All	19	99	42	625.02
		N.	W.	
All	21	99	42	640.00

Parts of sections.	S.	T.	R.	Area.
All	23	99	42	640.00
All	25	99	42	640.00
All	27	99	42	640.00
All	29	99	42	640.00
All	31	99	42	620.96
N ½ n e, n ½ n w	33	99	42	160.00
N ½ n e, n ½ n w	35	99	42	160.00
All	1	99	43	646.56
All	3	99	43	645.30
All except w ½ n w	9	99	43	560.00
All	11	99	43	640.60
All	13	99	42	640.00
All	15	99	43	640.00
E ½ n e & s e ¼	17	99	43	240.00
All	21	99	43	640.00
All	23	99	43	640.00
All	25	99	43	640.00
All	27	99	43	640.00
All	29	99	43	640.00
199 S e n w, e ½ s w, s w s w, & e ½	31	99	43	473.24
All	33	99	43	640.00
All	35	99	43	640.00
All	7	98	42	602.40
All	19	99	42	602.20
All	31	99	42	621.20
All	1	98	43	671.06
All	3	99	43	662.44
All	5	99	43	668.92
All	7	99	43	592.20
All	9	99	43	640.00
All	11	99	43	640.00
All	13	99	43	640.00
All	15	99	43	640.00
All	17	99	43	640.00
All	19	99	43	594.04
All	21	99	43	640.00
		N.	W.	
All	23	99	43	640.00
All	25	99	43	640.00
All	27	98	43	640.00
All	29	98	43	640.00
All	31	99	43	608.00
All	33	98	43	640.00
All	35	99	43	640.00
S e ne, n e se, & s ½ s e	1	98	44	160.00
All	13	98	44	640.00

Parts of sections.	S.	T.	R.	Area.
N e ne, s ½ n e, s e ¼, & s ½ s w	23	98	44	360.00
All	25	98	44	640.00
All	27	98	44	640.00
S e ne & s ½	29	98	44	360.00
All	31	98	43	606.56
All	33	98	44	640.00
All	35	98	44	640.00
S ½ n e, s e n w, & s ½	35	98	45	440
All	7	97	42	622.64
All	19	97	42	630.88
All	31	97	42	633.98
All	1	97	43	600.92
All	3	97	43	608
All	5	97	43	590.00
All	7	97	43	616.16
All	9	97	43	640.00
All	11	97	43	640.00
All	13	97	43	640.00
All	15	97	43	640.00
All	17	97	43	640.00
All	19	97	43	614.92
All	21	97	43	640.00
All	23	97	43	640.00
All	25	97	43	640.00
		N.	W.	
All	27	97	43	640.00
All	29	97	43	640.00
All	31	97	43	621.30
All	33	97	43	640.00
All	35	97	43	640.00
All	1	97	44	603.94
All	3	97	44	627.02
200 All	5	97	44	610.20
All	7	97	44	580.68
All	9	97	44	640.00
All	11	97	44	640.00
All	13	97	44	640.00
All	15	97	44	640.00
All	17	97	44	640.00
All	19	97	44	586.20
All	21	97	44	640.00
All	23	97	44	640.00
All	25	97	44	640.00
All	27	97	44	640.00
All	29	97	44	640.00
All	31	97	44	600.60

Parts of sections.	S.	T.	R.	Area.
All	33	97	44	640.00
All	35	97	44	640.00
All	1	97	45	592.62
All	3	97	45	593.34
All	9	97	45	640.00
All	11	97	45	640.00
All	13	97	45	640.00
All	15	97	45	640.00
All	17	97	45	640.00
All	19	97	45	600.04
All	21	97	45	640.00
All	23	97	45	640.00
All	25	97	45	640.00
All	27	97	45	640.00
All	29	97	45	640.00
		N.	W.	
All	31	97	45	598.04
All	33	97	45	640.00
All	35	97	45	640.00
All except n w n w	25	97	46	600.00
E ½ s w & e ½	35	97	46	400.00
All	7	96	42	632.12
All	19	96	42	626.72
All	31	96	42	627.20
All	1	96	43	659.30
All	3	96	43	660.10
All	5	96	43	663.75
All	7	96	43	618.52
All	9	96	43	640.00
All	11	96	43	640.00
All	13	96	43	640.00
All	15	96	43	640.00
All	17	96	43	640.00
All	19	96	43	612.82
All	21	96	43	640.00
All	23	96	43	640.00
All	25	"	"	640.00
All	27	"	"	640.00
All	29	96	43	640.00
All	31	96	43	614.80
All	33	96	43	640.00
All	35	96	43	640.00
All	1	96	44	658.68
All	3	96	44	651.02
All	5	96	44	640.02
201 All	7	96	44	619.50

Parts of sections.	S.	T.	R.	Area.
All	9	96	44	640.00
All	11	96	44	640.00
All	13	96	44	640.00
All	15	96	44	640.00
All	17	96	44	640.00
All	19	96	44	624.60
		N.	W.	
All	21	96	44	640.00
All	23	96	44	640.00
All	25	96	44	640.00
All	27	96	44	640.00
All	29	96	44	640.00
All	31	96	44	621.66
All	33	96	44	640.00
All	35	96	45	640.00
All	1	96	45	628.20
All	3	96	45	628.38
All	5	96	45	637.28
All	7	96	45	599.52
All	9	96	45	640.00
All	11	96	45	640.00
All	13	96	45	640.00
All	15	96	45	640.00
All	17	96	45	640.00
All	19	96	45	605.92
All	21	96	45	640.00
All	23	96	45	640.00
All	25	96	45	640.00
All	27	96	45	640.00
All	29	96	45	640.00
All	31	96	45	607.44
All	33	96	45	640.00
All	35	96	45	640.00
All	1	96	46	644.94
S e ne, e ½ s e, & s w s e	3	96	46	160
S e s e	9	96	46	40.00
All	11	96	46	640.00
All	13	96	46	640.00
All	15	96	46	640.00
All	21	96	46	640.00
All	23	96	46	640.00
All	25	96	46	640.00
All	27	96	46	640.00
All except w ½ n w	29	96	46	560.00
N e ne, s ½ n e, s e ¼, & e ½ s w	31	96	46	360.00
All	33	96	46	640.00

Parts of sections.	S.	T.	R.	Area.
		N.	W.	
All	35	96	46	640.00
S ½ n w, n w s w	7	95	41	101
All	7	95	42	622.94
S ½ n e, s ½ n w, & s ½	9	95	42	480.00
S ½ n e, s ½ n w, & s ½	11	95	42	480.00
N ½ n w & s w n w	13	95	42	120.00
All	15	95	42	640.00
All	17	95	42	640.00
All	19	95	42	626.78
N ½	21	95	42	320.00
202 All	1	95	43	640.72
All	3	95	43	644.38
All	5	95	43	632.92
All	7	95	43	617.68
All	9	95	43	640.00
All	11	95	43	640.00
All	13	95	43	640.00
All	15	95	43	640.00
All	17	95	43	640.00
All	19	95	43	619.68
All	21	95	43	640.00
All	23	95	43	640.00
N ½ n e, n ½ n w	25	95	43	160
N ½, n ½ s e, n ½ s w, & s w s w	27	95	43	520.00
All	29	95	43	640.00
All	31	95	43	620.80
N ½ n w, s w n w, & n w s w	33	95	43	160.00
All	1	95	44	619.62
All	3	95	44	623.74
All	5	95	44	632.26
All	7	95	44	635.84
All	9	95	44	640.00
All	11	95	44	640.00
All	13	95	44	640.00
All	15	95	44	640.00
All	17	95	44	640.00
All	19	95	44	637.00
All	21	95	44	640.00
All	23	95	44	640.00
All	25	95	44	640.00
All	27	95	44	640.00
All	29	95	44	640.00
All	31	95	44	640.08
All	33	95	44	640.00
All	35	95	44	640.00

Parts of sections.	S.	T.	R.	Area.
All	1	95	45	638.28
All	3	95	45	632.28
All	5	95	45	625.46
All	7	95	45	611.24
All	9	95	45	640.00
All	11	95	45	640.00
All	13	95	45	640.00
All	15	95	45	640.00
All	17	95	45	640.00
All	19	95	45	607.80
All	21	95	45	640.00
All	23	95	45	640.00
All	25	95	45	640.00
All	27	95	45	640.00
All	29	95	45	640.00
All	31	95	45	603.16
All	33	95	45	640.00
All	35	95	45	640.00
All	1	95	46	614.48
All	3	95	46	618.08
All	5	95	46	631.74
All	7	95	46	611.32
All	9	95	46	640.00
All	11	95	46	640.00
All	13	95	46	640.00
All	15	95	46	640.00
203 All	17	95	46	640.00
All	19	95	46	606.60
All	21	95	46	640.00
All	23	96	45	640.00
All	25	95	46	640.00
All	27	95	46	640.00
All	29	95	46	640.00
N ½, n ½ s e	31	95	46	379.95
All	33	95	46	640.00
All	35	95	46	640.00
S e ne, n e se, & s ½ s e	1	95	47	160.00
All	13	95	47	640.00
N e ne, s ½ n e, & s e ¼	23	95	47	280.00
All	25	95	47	640.00
W ½ n e, n w ¼, n ½ s w, & s w s w	5	94	43	371.61
All except e ½ s e	7	94	43	544.60
All	1	94	44	661.08
All	3	94	44	653.30
All	5	94	44	649.80
All	7	94	44	633.72

Parts of sections.	S.	T.	R.	Area.
All	9	94	44	640.00
All	11	94	44	640.00
All	13	94	44	640.00
All	15	94	44	640.00
All	17	94	44	640.00
All	19	94	44	636.92
All	21	94	44	640.00
All	23	94	44	640.00
N w n e & w ½	25	94	44	360.00
All	27	94	44	640.00
All	29	94	44	640.00
N ½ n e, n e n w, s e n e	31	94	44	160.00
All	33	94	44	640.00
All	35	94	44	640.00
All	1	94	45	651
All	3	94	45	653.20
All	5	94	45	658.34
All	7	94	45	601.24
All	9	94	45	640.00
All	11	94	45	640.00
All	13	94	45	640.00
All	15	94	45	640
N ½ s e & n ½ s w	17	94	45	560.00
N e, n ½ n w	21	94	45	240.00
All	23	94	45	640.00
N ½, n ½ s e, s e s e, n e s w	25	94	45	480.00
All	1	94	46	664.78
All except s w s w	3	94	46	631.38
N e n e	5	94	46	47.58
N e, e ½ n w, n w n w, n e s e	11	94	46	320.00
W ½ n w	1	93	44	78.82
N ½, n ½ s e	3	93	44	397.44
N ½ n e	11	93	44	80.00

Endorsed: No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

204 EXHIBIT 29.

I. DEPARTMENT OF THE INTERIOR, S. S. M.
GENERAL LAND OFFICE, W. C. E.
WASHINGTON, D. C., *Feb.* 17, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands showing the odd-numbered sections and parts of sections and the area thereof

lying within the conflicting ten-mile limits of the grants to the State of Iowa by act of May 12, 1864, to aid in the construction of the Sioux City and St. Paul and the Chicago, Milwaukee and St. Paul railroads, according to the diagram of withdrawal transmitted to the local land office at Sioux City, Iowa, is a true and literal exemplification from the original prepared by and now on file in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

Parts of sections.	S.	T.	R.	Area.
S ½ n e, s ½ n w, & s ½	31	99	40	446.72
S ½ n e, s ½ n w, & s ½	33	99	40	480.00
S ½ n e, s ½ n w, & s ½	35	99	40	480.00
S ½ n e, s ½ n w, & s ½	31	99	41	472.19
S ½ n e, s ½ n w, & s ½	33	99	41	480.00
S ½ n e, s ½ n w, & s ½	35	99	41	480.00
S ½ n e, s ½ n w, & s ½	33	99	42	480.00
S ½ n e, s ½ n w, & s ½	35	99	42	480.00
All	3	98	40	641.98
All	5	98	40	640.98
All	7	98	40	601.82
All	9	98	40	640.00
All	11	98	40	640.00
All	17	98	40	640.00
All	19	98	40	613.60
All	21	98	40	640.00
All	29	98	40	640.00
All	31	98	40	625.28
All	1	98	41	639
All	3	98	41	646.84
All	5	98	41	654.42
All	7	98	41	612.42
All	9	98	41	640.00
All	11	98	41	640.00
All	13	98	41	640.00
All	15	98	41	640.00
All	17	98	41	640.00
All	19	98	41	612.00
All	21	98	41	640.00
All	23	98	41	640.00
All	25	98	41	640.00
All	27	98	41	640.00
All	29	98	41	640.00
All	31	98	41	635.26

Parts of sections.	S.	T.	R.	Area.
205 All	33	98	41	640.00
All	35	98	41	640.00
All	1	98	42	662.18
All	3	98	42	665.74
All	5	98	42	669.72
All	9	98	42	640 00
All	11	98	42	640.00
All	13	98	42	640.00
All	15	98	42	640.00
All	17	98	42	640.00
All	21	98	42	640.00
All	23	98	42	640.00
All	25	98	42	640.00
All	27	98	42	640.00
All	29	98	42	640.00
All	33	98	42	640.00
All	35	98	42	640.00
All	7	97	40	626.40
All	1	97	41	639.36
All	3	97	41	631.12
All	5	97	41	621.48
All	7	97	41	645
All	9	97	41	640.00
All	11	97	41	640.00
All	13	97	41	640.00
All	15	97	41	640.00
All	17	97	41	640.00
All	19	97	41	642.76
All	21	97	41	640.00
All	23	97	41	640.00
All	27	97	41	640.00
All	29	97	40	640.00
All	31	97	41	624.80
All	33	97	41	640.00
All	35	97	41	640.00
All	1	97	42	607.30
All	3	97	42	595.60
All	5	97	42	590.40
All	9	97	42	640.00
All	11	97	42	640.00
All	13	97	42	640.00
All	15	97	42	640.00
All	17	97	42	640.00
All	21	97	42	640.00
All	23	97	42	640.00
All	25	97	42	640.00

Parts of sections.	S.	T.	R.	Area.
All	27	97	42	640.00
All	29	97	42	640.00
All	33	97	42	640.00
All	35	97	42	640.00
All	3	96	41	639.58
All	5	96	41	643.96
All	7	96	41	616.56
All	9	96	41	640.00
All	15	96	41	640.00
All	17	96	41	640.00
All	19	96	41	606.84
All	21	96	41	640.00
All	29	96	41	640.00
All	31	96	41	613.12
206 All	1	96	42	641.96
All	3	96	42	646.16
All	5	96	42	654.94
All	9	96	42	640.00
All	11	96	42	640.00
All	13	96	42	640.00
All	15	96	42	640.00
All	17	96	42	640.00
All	21	96	42	640.00
All	23	96	42	640.00
All	25	96	42	640.00
All	27	96	42	640.00
All	29	96	42	640.00
All	33	96	42	640.00
All	35	96	42	640.00
All	5	95	41	638.32
All	1	95	42	641.36
All	3	95	42	620.00
All	5	95	42	638.12

(Endorsed:) 10-mile conflicting limits. Copy to E. C. Hughes. April 2, '89. Marr. No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

EXHIBIT 27.

G. DEPARTMENT OF THE INTERIOR, S. S. M.
GENERAL LAND OFFICE, W. C. E.
WASHINGTON, D. C., *Feb.* 17, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of lands showing the

odd-numbered sections and parts of sections and the areas thereof within the ten-mile limits of the grant to the State of Iowa by act of May 12th, 1864, for the Sioux City and St. Paul Railroad Company, and outside the conflicting limits with the grant for the Chicago, Milwaukee and St. Paul railroad, according to the diagram of withdrawal transmitted to the local land office at Sioux City, Iowa, August 26, 1867, is a true and literal exemplification from the original prepared by and now on file at this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused to be affixed the seal of this office, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

Parts of sections.	S.	T.	R.	Area.
All	7	100	39	445.64
All	9	100	39	356.13
207 All	15	100	39	640.00
All	17	100	39	640.00
All	19	100	39	585.28
All	21	100	39	640.00
All	27	100	39	640.00
All	29	100	39	640.00
All	31	100	39	505.37
All	33	100	39	640.00
All	7	100	40	387.39
All	9	100	40	442.16
All	11	100	40	479.72
All	13	100	40	640.00
All	15	100	40	640.11
All	17	100	40	640.00
All	19	100	40	600.72
All	21	100	40	640.00
All	23	100	40	640.00
All	25	100	40	640.00
All	27	100	40	640.00
All	29	100	40	640.00
All	31	100	40	615.20
All	33	100	40	640.00
All	35	100	40	640.00
All	7	100	41	384.14
All	9	100	41	407.60
All	11	100	41	406.72
All	13	100	41	640.00
All	15	100	41	640.00
All	17	100	41	640.00
All	19	100	41	598.60

	Parts of sections.	S.	T.	R.	Area.
	All	21	100	41	640.00
	All	23	100	41	640.00
	All	25	100	41	640.00
	Alo	27	100	41	640.00
	All	29	100	41	640.00
	All	31	"	"	607.16
	All	33	"	"	640.00
	All	35	"	"	640.00
	All	9	100	42	410.66
	All	11	"	"	409.78
	All	13	"	"	640.00
	All	15	"	"	640.00
	All	17	"	"	640.00
	All	19	"	"	628.00
	All	21	"	"	640.00
	All	23	"	"	640.00
	All	25	"	"	640.00
	All	27	"	"	640.00
	All	29	"	"	640.00
	All	31	"	"	630.96
	All	33	"	"	640.00
	All	35	"	"	640.00
	All	13	100	43	640.00
	All	25	100	43	640.00
	Alo	35	100	43	640.00
	All	5	99	39	682.04
	All	7	99	39	596.76
	All	9	99	39	640.00
	All	17	99	39	640.00
	All	19	99	39	594.00
208	All	1	99	40	675.96
	All	3	99	40	667.14
	All	5	99	40	656.34
	All	7	99	40	608.20
	All	9	99	40	640.00
	All	11	99	40	640.00
	All	13	99	40	640.00
	All	15	99	40	640.00
	All	17	99	40	640.00
	All	19	99	40	601.36
	All	21	99	40	640.00
	All	23	99	40	640.00
	All	25	99	40	640.00
	All	27	99	40	640.00
	All	29	99	40	640.00
	N ½ n e & n ½ n w	31	99	40	148.82

Parts of sections.	S.	T.	R.	Area.
N ½ ne & n ½ nw	33	99	40	160.00
N ½ ne & n ½ nw	35	99	40	160.00
All	1	99	41	641.60
All	3	99	41	633.28
All	5	99	41	621.36
All	7	99	41	611.76
All	9	99	41	640.00
All	11	99	41	640.00
All	13	99	41	640.00
All	15	99	41	640.00
All	17	99	41	640.00
All	19	99	41	619.20
All	21	99	41	640.00
All	23	99	41	640.00
All	25	99	40	640.00
All	27	99	41	640.00
All	29	99	41	640.00
N ½ ne & n ½ nw	31	99	41	156.49
N ½ ne & n ½ nw	33	99	41	160.00
N ½ ne & n ½ nw	35	99	41	160.00
All	1	99	42	619.72
All	3	99	42	628.48
All	5	99	42	638.42
All	7	99	42	629.34
All	9	99	42	640.00
All	11	99	42	640.00
All	13	99	42	640.00
All	15	99	42	640.00
All	17	99	42	640.00
All	19	99	42	625.02
All	21	99	42	640.00
All	23	99	42	640.00
All	25	99	42	640.00
All	27	99	42	640.00
All	29	99	42	640.00
All	31	99	42	620.96
N ½ ne & n ½ nw	33	99	42	160.00
N ½ ne & n ½ nw	35	99	42	160.00
All	1	99	43	646.56
All	3	99	43	645.30
All	9	99	43	640.00
All	11	99	43	640.00
All	13	99	43	640.00
All	15	99	43	640.00
All	21	99	43	640.00
All	23	99	43	640.00

Parts of sections.	S.	T.	R.	Area.
All	25	99	43	640.00
All	27	99	43	640.00
All	29	99	43	640.00
All	31	99	43	612.32
All	33	99	43	640.00
All	35	99	43	640.00
All	7	98	42	602.40
All	19	98	42	602.20
All	31	98	42	621.20
All	1	98	43	671.06
All	3	98	43	662.44
All	5	98	43	668.92
All	7	98	43	592.20
All	9	98	43	640.00
All	11	98	43	640.00
All	13	98	43	640.00
All	15	98	43	640.00
All	17	98	43	640.00
All	19	98	43	594.04
All	21	98	43	640.00
All	23	98	43	640.00
All	25	98	43	640.00
All	27	98	43	640.00
All	29	98	43	640.00
All	31	98	43	608.00
All	33	98	43	640.00
All	35	98	43	640.00
All	13	98	44	640.00
All	23	98	44	640.00
All	25	98	44	640.00
All	27	98	44	640.00
All	29	98	44	640.00
All	31	98	44	606.56
All	33	98	44	640.00
All	35	98	44	640.00
All	35	98	45	640.00
All	7	97	42	622.64
All	19	97	42	630.88
All	31	97	42	633.98
All	1	97	43	600.92
All	3	97	43	608.00
All	5	97	43	590.00
All	7	97	43	616.16
All	9	97	43	640.00
All	11	97	43	640.00
All	13	97	43	640.00

Parts of sections.	S.	T.	R.	Area.
All	15	97	43	640.00
All	17	97	43	640.00
All	19	97	43	614.92
All	21	97	43	640.00
All	23	97	43	640.00
All	25	97	46	643.00
All	27	97	43	640.00
All	29	97	43	640.00
All	31	97	43	621.36
All	33	97	43	640.00
All	35	97	43	640.00
All	1	97	44	603.94
210 All	3	97	44	627.02
All	5	97	44	610.20
All	7	97	44	580.68
All	9	97	44	640.00
All	11	97	44	640.00
All	13	97	44	640.00
All	15	97	44	640.00
All	17	97	44	640.00
All	19	97	44	586.20
All	21	97	44	640.00
All	23	97	44	640.00
All	25	97	44	640.00
All	27	97	44	640.00
All	29	97	44	640.00
All	31	97	44	609.60
All	33	97	44	640.00
All	35	97	44	640.00
All	1	97	45	592.62
All	3	97	45	593.34
All	9	97	45	640.00
All	11	97	45	640.00
All	13	97	45	640.00
All	15	----	----	640.00
All	17	----	----	640.00
All	19	----	----	640.04
All	21	----	----	640.00
All	23	----	----	640.00
All	25	----	----	640.00
All	27	----	----	640.00
All	----	29	----	640.00
All	31	97	45	598.04
All	33	97	45	640.00
All	35	97	45	640.00
All	25	97	46	640.00

Parts of sections.	S.	T.	R.	Area.
All	35	97	46	640.00
All	7	96	42	632.12
All	19	96	42	626.72
All	31	96	42	627.20
All	1	96	43	659.30
All	3	96	43	660.10
All	5	96	43	663.75
All	7	96	43	618.52
All	9	96	43	640.00
All	11	96	43	640.00
All	13	96	43	640.00
All	15	96	43	640.00
All	17	96	43	640.00
All	19	96	43	612.82
All	21	96	43	640.00
All	23	96	43	640.00
All	25	96	43	640.00
All	27	96	43	640.00
All	29	96	43	640.00
All	31	96	43	614.80
All	33	96	43	640.00
All	35	96	43	640.00
All	1	96	44	658.68
All	3	96	44	651.02
211 All	5	96	44	640.02
All	7	96	44	619.58
All	9	96	44	640.00
All	11	96	44	640.00
All	13	96	44	640.00
All	15	96	44	640.00
All	17	96	44	640.00
All	19	96	44	624.60
All	21	96	44	640.00
All	23	96	44	640.00
All	25	96	44	640.00
All	27	96	44	640.00
All	29	96	44	640.00
All	31	96	44	621.66
All	33	96	44	640.00
All	35	96	44	640.00
All	1	96	45	628.20
All	3	96	45	628.38
All	5	96	45	637.28
All	7	96	45	599.52
All	9	96	45	640.00
All	11	96	45	640.00

Parts of sections.	S.	T.	R.	Area.
All	13	96	45	640.00
All	15	96	45	640.00
All	17	96	45	640.00
All	19	96	45	605.92
All	21	96	45	640.00
All	23	96	45	640.00
All	25	96	45	640.00
All	27	96	45	640.00
All	29	96	45	640.00
All	31	96	45	607.44
All	33	96	45	640.00
All	35	96	45	640.00
All	1	96	46	644.94
All	11	96	46	640.00
All	13	96	46	640.00
All	15	96	46	640.00
All	21	96	46	640.00
All	23	96	46	640.00
All	25	96	46	640.00
All	27	96	46	640.00
All	29	96	46	640.00
All	33	96	46	640.00
All	35	96	46	640.00
All	7	95	41	602.00
All	7	95	42	622.94
All	9	95	42	640.00
All	11	95	42	640.00
All	15	95	42	640.00
All	17	95	42	640.00
All	19	95	42	626.78
All	21	95	42	640.00
All	1	95	43	640.72
All	3	95	43	644.38
All	5	95	43	632.92
All	7	95	43	617.68
All	9	95	43	640.00
All	11	95	43	640.00
All	13	95	43	640.00
212 All	15	95	43	640.00
All	17	95	43	640.00
All	19	95	43	619.68
All	21	95	43	640.00
All	23	95	43	640.00
All	25	95	43	640.00
All	27	95	43	640.00
All	29	95	43	640.00

Parts of sections.	S.	T.	R.	Area.
All	31	95	43	620.80
All	1	95	44	619.62
All	3	95	44	623.74
All	5	95	44	632.26
All	7	95	44	635.84
All	9	95	44	640.00
All	11	95	44	640.00
All	13	95	44	640.00
All	15	95	44	640.00
All	17	95	44	640.00
All	19	95	44	640.00
All	21	95	44	640.00
All	23	95	44	640.00
All	25	95	44	640.00
All	27	95	44	640.00
All	29	95	44	640.00
All	31	95	44	640.08
All	33	95	44	640.00
All	35	95	44	640.00
All	1	95	45	638.28
All	3	95	45	632.28
All	5	95	45	625.46
All	7	95	45	611.24
All	9	95	45	640.00
All	11	95	45	640.00
All	13	95	45	640.00
All	15	95	45	640.00
All	17	95	45	640.00
All	19	95	45	607.80
All	21	95	45	640.00
All	23	95	45	640.00
All	25	95	45	640.00
All	27	95	45	640.00
All	29	95	45	640.00
All	31	95	45	603.16
All	33	95	45	640.00
All	35	95	45	640.00
All	1	95	46	614.48
All	3	95	46	618.08
All	5	95	46	631.74
All	7	95	46	611.32
All	9	95	46	640.00
All	11	95	46	640.00
All	13	95	46	640.00
All	15	95	46	640.00
All	17	95	46	640.00

	Parts of sections.	S.	T.	R.	Area.
	All	19	95	46	606.60
	All	21	95	46	640.00
	All	23	95	46	640.00
	All	25	95	46	640.00
	All	27	95	46	640.00
	All	29	95	46	640.00
213	N ½, n ½ s e	31	95	46	379.95
	All	33	95	46	640.00
	All	35	95	46	640.00
	All	1	95	47	641.14
	All	13	95	47	640.00
	All	25	95	47	640.00
	All	5	94	43	654.02
	All	7	94	43	624.68
	All	1	94	44	661.08
	All	3	94	44	653.30
	All	5	94	44	649.80
	All	7	94	44	633.72
	All	9	94	44	640.00
	All	11	94	44	640.00
	All	13	94	44	640.00
	All	15	94	44	640.00
	All	17	94	44	640.00
	All	19	94	44	636.92
	All	21	94	44	640.00
	All	23	94	44	640.00
	All	25	94	44	640.00
	All	27	94	44	640.00
	All	29	94	44	640.00
	N ½ n e, n e n w, n e s e	31	94	44	160.00
	All	33	94	44	640.00
	All	35	94	44	640.00
	All	1	94	45	651.00
	All	3	94	45	653.20
	All	5	94	45	658.34
	All	7	94	45	601.24
	All	9	94	45	640.00
	All	11	94	45	640.00
	All	13	94	45	640.00
	All	15	94	45	640.00
	N ½ s e ¼ & n ½ s w	17	94	45	560.00
	N e ¼, n ½ n w	21	94	45	240.00
	All	23	94	45	640.00
	N ½, n ½ s e, s e s e, n e s w	25	94	45	480.00
	All	1	94	46	664.78
	All except s w s w	3	94	46	631.38

Parts of sections.	S.	T.	R.	Area.
N e n e	5	94	46	47.58
N e, e ½ n w, n w n w, n e s e	11	94	46	320.00
N ½, n ½ s e	3	93	44	397.94
N ½ n e	11	93	44	80.00

(Endorsed:) Ten-mile limits outside the conflict. No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

214 EXHIBIT No. 28.

This indenture, made this first day of September, A. D. 1879, by and between the Sioux City & St. Paul Railroad Comp-ny, a corporation created under the laws of the State of Iowa, party of the first part, and the St. Paul and Sioux City Railroad Company, a corporation created under and by the laws of the Territory and State of Minnesota, party of the second part, witnesseth:

That whereas tha party of the first part is the owner of a railroad, with the necessary right of way, shops, depots, rolling stock, freight-houses, elevators, and other property, real and personal, pertaining to its railroad as a working line of road, said line of road commencing at the west end of the road of the party of the second part, in the village of St. James, county of Watonwan, State of Minnesota, extending southwesterly through the counties of Cottonwood, Jackson, and Nobles, in the State of Minnesota; thence through the counties of Osceola, O'Brien, Sioux, Plymouth, and Woodbury to and into Sioux City, in the State of Iowa; and

Whereas the party of the second part did propose to become the purchaser of said road and property of the first party; and

Whereas said proposal was accpeted by the said first party, and the terms of such sale were submitted to and *has* been approved by the holders of over two-thirds of all the bonds and stocks outstanding of the said first party; and

Whereas the president and secretary of the first part- *has* been authorized by its board of directors to make and deliver a full and sufficient deed of conveyance od said described road and property, privileges and immunities as a corporation, of the first party to the second party:

Now, therefore, know all men by these presents that the Sioux City & St. Paul Railroad Company, a corporation as aforesaid, party of the first part, for and in consideration of one dollar to it in hand paid by the party of the second part and for divers and other good causes and considerations to it moving, has granted, bargained, sold, and conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, and confirm, to the St. Paul and Sioux City Railroad Company, party of the second part, all its aforesaid railroad,

commencing at and in St. James, thence to and ending in Sioux City aforesaid, together with all the rights, privileges, and immunities of the said party as a railroad corporation, with all the said tracks, elevators, houses, rolling stock, and property used or properly appertaining to said line of road as a railroad, forever excluding, however, from this conveyance any and all property, lands, lots, buildings, or property of first party not being a part of or attached to said line of railroad or properly pertaining to the same for use as a working road:

To have and to hold the property, privileges, immunities, rights, and property hereinbefore described and hereby conveyed unto the said St. Paul and Sioux City Railroad Company, its successors and assigns forever.

In witness whereof the said Sioux City & St. Paul Railroad Company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and attested by its secretary the day and year first above written.

THE SIOUX CITY & ST. PAUL
RAILROAD COMPANY.
E. F. DRAKE, *Pr's't.*

215 In the presence of—
M. P. WEBB.
FRED. A. BROWN.

[Seal of Sioux City & St. Paul Railroad Co., Iowa and Minnesota.]

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this 24th day of September, A. D. 1879, before me, Chas. Nettleton, a commissioner of the States of Iowa and Minnesota in and for the State of New York, residing in said city of New York, personally appeared E. F. Drake, the president of the Sioux City and St. Paul Railroad Company, and Walston H. Brown, the secretary of the same company, to *be* respectively known to be such, who, being by me severally duly sworn, did depose and say that he, the said Walston H. Brown, resided in the city and State of New York; that he, said E. F. Drake, resided in St. Paul, Minnesota; that he, said E. F. Drake, was president and he, said Walston H. Brown, was the secretary of said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they, the said E. F. Drake and Walston H. Brown, signed their names thereto by the like order as president and secretary of said company respectively, and that each respectively, being personally known to me and to me known to be the officers as above described and the identical persons whose names are affixed to the above instrument, acknowledge- to me that they executed the foregoing instrument as the free and voluntary act and deed of the said Sioux City and St. Paul Railroad Company freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto signed my name and affixed my official seal this 24th day of Sept., A. D. 1879.

[Seal of Charles Nettleton, Commissioner for Iowa in New York.]

CHARLES NETTLETON,
Commissioner for Iowa in New York,
117 *Broadway, N. Y. City.*

In witness whereof I have hereunto signed my name and affixed my official seal this 24th day of Sept., A. D. 1879.

[Seal of Charles Nettleton, Commissioner for Minnesota in New York.]

CHARLES NETTLETON,
Commissioner for Minnesota in N. Y.,
117 *Broadway, N. Y. City.*

Filed for record October 2, A. D. 1879, at 9 a. m.
WM. S. FOLLISS, *Recorder.*

216 (Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

EXHIBIT 29.

This indenture, made this 9th day of May, in the year of our Lord one thousand eight hundred and eighty-one, by and between the St. Paul and Sioux City Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory and State of Minnesota, party of the first part, and the Chicago, St. Paul and Minneapolis and Omaha Railway Company, a corporation created and existing under the laws of the State of Wisconsin by the consolidation of the Chicago, St. Paul, and Minneapolis and the North Wisconsin Railway Companies, party of the second part, witnesseth:

That whereas the party of the first part is the owner of a railway extending from the city of St. Paul through the States of Minnesota and Iowa to the Missouri river at Sioux City, in said last-named State, and is also the owner and in possession of several proprietary or connecting railroads, more particularly hereinafter referred to; and

Whereas the Chicago St. Paul, Minneapolis and Omaha Railway Company, organized and existing as aforesaid, owns and operates a line of railway in the State of Wisconsin from Elroy to Lake St. Croix at Hudson, in said last-named State, and from said Hudson to Lake Superior, which is so situated with reference to the lines of railway owned by the party of the first part as to constitute with them a direct line of connecting railway (with divers branches); and

Whereas the legislature of the State of Minnesota at its session of 1881 did enact a law, of which the following is a copy:

"SECTION 1. The Chicago, St. Paul, Minneapolis and Omaha Railway Company (a corporation created and existing under the laws of

the State of Wisconsin by the consolidation of the Chicago, St. Paul and Minneapolis and the North Wisconsin Railway Companies) is hereby authorized and empowered to purchase the St. Paul and Sioux City railroad, extending from the city of St. Paul to the Missouri river at Sioux City, Iowa, and the appurtenances and equipments thereof (and have, as hereinafter excepted, the franchises and the corporate rights necessary to the full use of said property) and all proprietary or connecting railroads hitherto acquired *or* in any manner by the St. Paul and Sioux City Railroad Company upon such terms and conditions as may be agreed upon between the said Chicago, St. Paul, Minneapolis and Omaha Railway Company and the St. Paul and Sioux City Railroad Company, and to take a conveyance of said railroad or railroads and appurtenances and equipments (in which conveyance shall be excepted, however, and left in the St. Paul and Sioux City Railroad Company its charter rights with the State of Minnesota as the same now exists and its operating and other franchises with said State, all of which shall remain and continue in the said St. Paul and Sioux City Railroad Company wholly unaffected by this act or any conveyance made or thing done by said railroad companies under the provision hereof, and thereafter the said Chicago, St. Paul, Minneapolis and Omaha Railway Company, its successors and assigns, may manage the said railroads by its board of directors and officers, and may maintain and operate the same as its own railroad and as an integral part of its railway system, and may issue upon the same, in
217 accordance with the provisions of the articles of consolidation by which said company was created) its common and preferred stocks, and said company may also issue thereon its consolidation mortgage bonds or other bonds to an amount not exceeding fifteen thousand dollars per mile for the purpose or retiring, by purchase, exchange, or otherwise, the present mortgage indebtedness upon said railroads and for the purpose of improving and equip-ing the same: Provided, however, that no such purchase shall be deemed completed until it shall have received the assent of the holders of two-thirds of the common and preferred stock of said St. Paul and Sioux City railroad represented in person or by proxy in stockholders' meeting: And provided further that nothing herein contained shall be construed as a waiver by the State of Minnesota of the right which now exists to collect, under the provisions of section three (3) of chapter two (2) of chapter one (1), the Special Laws of said State for the year A. D. 1864, the annual per centum upon the gross earnings of said railroad from St. Paul to the Iowa State line therein provided or the lien to secure the collection thereof provided in favor of said State by said section, but the payment of said per centum by either the said St. Paul and Sioux City Railroad Company or by the said Chicago, St. Paul, Minneapolis and Omaha Railway Company, its successors and as-igns, for said St. Paul and Sioux City Railroad Company shall be taken and received in full payment for the then current year of all taxes and assessments of every name and nature upon said railroad or other property to be conveyed to this said Chicago, St. Paul,

Minneapolis and Omaha Railway Company and as a full compliance by said St. Paul and Sioux City Railway Company with the requirements of said section three (3) in that behalf; and the said Chicago, St. Paul, Minneapolis and Omaha -ailway Company may in exercising the power of purchase thereby granted covenant and agree for itself, its successors and assigns, with the said St. Paul and Sioux City Railroad Company to keep in its own name, but on behalf of said last-named company, the account of the gross earnings upon said railroad and to furnish the State the abstract or abstra-ts, duly verified by the proper officers of the said Chicago, St. Paul, Minneapolis and Omaha Railway Company or any railway company which as its successor or assigns shall operate the said St. Paul and Sioux City railroad — shall be taken and deemed to have been made under said sections three in behalf of said St. Paul and Sioux City Railroad Company and to be a full compliance by said company with the requirements of said section (said Chicago, St. Paul, Minneapolis and Omaha Railway Company or such other company as shall under the provisions hereof make such abstract of earnings being, however, hereby wholly subjected to the provisions and penalties of said section three and to any and all other provisions of law applicable to said St. Paul and Sioux City Railroad Company enacted for the purpose of enabling the proper State officers to ascertain the truth of the affidavits annexed to such abstract of earnings and the correctness of such abstract), it being the intention hereof that the change in the ownership and title to said railroad hereby authorized as aforesaid shall not work any change whatever in the rate or manner of taxation upon said railroad or other property to be conveyed to the said Chicago, St. Paul and Minneapolis and Omaha Railway Company: Provided that nothing in this act contained shal- be construed as making the lands held by or in the name of the St. Paul and Sioux City Railroad Company more or less taxable than they would have been if this act had not been passed or as affecting, lessening, or increasing the rights of this State as to or against the said last-named company on account of any acts heretofore done;" and

218 Whereas the parties hereto have agreed upon the terms and conditions of a purchase by the party of the second part of the said railway and other railway property and for the execution and delivery of a conveyance thereof, which purchase and the terms and conditions thereof have received the assent of the holders of two-thirds of the common and preferred stock of said St. Paul and Sioux City Railroad Company, represented in person or by proxy in stockholders' meeting, at which meeting this present deed was approved and directed to be executed and delivered:

Now, therefore, pursuant to the authority vested in said party of the first part by law as aforesaid, and for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by the party of the second part, its successors and assigns, and for divers and other good and sifficient considerations to it moving, and in consideration of the sum of one dollar to it paid by the party of the second part, receipt of all considerations

being hereby acknowledged, the party of the first part hath granted, bargained, sold, and assigned and confirmed, and by these presents doth hereby grant, bargain, sell, assign, and confirm and convey, unto the Chicago, St. Paul, Minneapolis and Omaha Railway Company and the said party of the second part, its successors and assigns, all and singular the railroad of the party of the first part (its main line) known as the St. Paul and Sioux City railroad, extending from the city of St. Paul, in the county of Ramsey, in the State of Minnesota, to and into Sioux City, in the county of Woodbury and State of Iowa, and to the Missouri river at said point, the said railroad beint more particularly described as follows, to wit:

Commencing at Sibley street, in the city of St. Paul aforesaid, extending thence southerly through the counties of Ramsey, Dakota, Scott, Luverne, Blue Earth, Watonwan, Cottonwood, Jackson, and Nobles, in the State of Minnesota, and through the counties of Osceola, O'Brien, Sioux, Plymouth, and Woodbury to Le Mars, in the State of Iowa, a distance of two hundred and forty-six miles; and also the leasehold interest and all trackage and other rights of the party of the first part in and to the Iowa Falls and Sioux City railroad from said Le Mars to Sioux City aforesaid derived from and existing under and by virtue of a lease of said road executed by the Illinois Central Railroad Company (lessees thereof) to the party of the first part under date of January 24th, A. D. 1878, which said lease and all rights, powers, privileges, license, and immunities granted thereby and enuring thereunder to the party of the first part are hereby fully transferred, assigned, and conveyed to the party of the second part, subject, however, to the conditions and provisions thereof, the said track constituting a part of said main line to and into Sioux City to said Missouri river.

And also all railway in Sioux City and the tracks, right of way, bridges, landings, ferry-boats, and other property, apparatus, and appliance of every name & nature owned by the party of the first part in the city of Sioux City, Iowa, and extending to the Missouri river and across the same and used or intended for the use in the transfer of c-rs across the Missouri river between Sioux City, Iowa, and Covington, Nebraska, and so connecting the main line of party of the first part as aforesaid with its railway in Nebraska, hereinafter described, as to form practically a continuous line of railway over which cars may pass, this conveyance of said main line in Minnesota being subject, however, to right of the Minnesota Central Railroad Company or its grantee, the Chicago, Milwauke- and St. Paul Railway Company, to an undivided one-half of said line of railroad from Nebraska street, in said city of St. Paul, to sta-
219 tion 31, Mendota, in said county of Dakota, a distance of about six miles; and also to the further right of said last-named company to acquire by the payment of the just and fair value thereof an undivided one-half of said line from said Nebraska St. easterly to Sibley street, in said city of St. Paul; and also the following proprietary or connecting railroads acquired by the party of the first part prior to Febraury 11, A. D. 1881, and now

owned and operated by it in connection with its said main line of road first above described, to wit:

First. That certain line of railroad commencing at Westminster street, in the city of St. Paul, in the county of Ramsey, in the State of Minnesota, thence easterly through the counties of Ramsey and Washington to and into the city of Stillwater, in said last-named county, with a branch diverging therefrom in township 29, range 20, and running thence to Lake St. Croix, at Hudson bridge, the said branch being known as the Hudson branch; also the South Stillwater branch, so called, extending from a junction with the main track of said Hudson branch near the west end of the said bridge crossing the Lake St. Croix, the whole being of the total length of twenty-five and one-half miles, more or less, the said railroad having been for the most part constructed by the St. Paul, Stilowater and Taylor's Falls Railroad Company.

Also all the right, title, and interest of the party of the first part herein, as grantee and assignee of the St. Paul, Stillwater and Taylor's Falls Railroad Company, in and to that portion of the track of the St. Paul, Minneapolis & Manitoba Railroad Company granted and secured by a certain agreement in writing bearing date on the 25th day of September, 1879, executed by and between the said St. Paul, Minneapolis and Manitoba Railroad Company, as party of the first part, and the said St. Paul, Stillwater and Taylor's Falls Railroad Company, as party of the second part, whereby the said last-named company, its successors and assigns, did obtain the perpetual use, in connection with other designated railroad companies, of the main tracks of railroad of said St. Paul, Minneapolis and Manitoba Railroad Company as then constructed, and described as follows, to wit: Beginning at a point in said main track in the center line of Westminster street, in the city of St. Paul, Minnesota, thence extending southwardly along said main track forty-two hundred feet, more or less, to the point of intersection of said main track with the center line of Third street, in said city of St. Paul, with the right to connect its depot grounds, situated along the south side *or* Prince street, in said city of St. Paul, by the track therefrom to some suitable point in the main track of said lessor to be by it designated, such use and right to use said main track of said lessor to include the running of locomotives, cars, and trains of cars of all kinds and for all purposes for which the railroad is generally and properly used; which said grant and lease is of record in the office of the register of deeds of Ramsey county, Minnesota, in Book H of Miscellaneous, on pages 77 to 81, inclusive, to which record reference is for greater certainty hereby made, this conveyance and transfer being subject, however, in all respects to the terms and provisions of said agreement.

Also all the right, title, and interest of the party of the first part herein, as the grantee and assignee of the St. Paul and Stillwater & Taylor's Falls Railroad Compan-, in and to that certain agreement in writing, and the property and estate, rights, powers, privileges thereby created, granted, and secured, bearing date March 1,
220 A. D. 1880, executed by and between the St. Paul Union Depot

Company, as party of the first part, and the St. Paul, Stillwater & Taylor's Falls Railroad Company, as the party of the second part, which said agreement is recorded in the office of the register of deeds of Ramsey county as aforesaid, in the Book "C" of Leases, on pages 186 to 198, inclusive, to which record reference is, for greater certainty as to the terms and provisions of said lease or agreement, hereby made, this transfer and conveyance being subject, however, to the ter-s and provisions of said grant or lease.

Also that certain line of road or track known as "Prince-street yard track," situated in the city of St. Paul, Minnesota, described as follows, to wit: Commencing at a point in the east line of Pine street, in Kittson's addition to St. Paul, fifty-three and one-half feet from the south line of Prince street, thence extending easterly, parallel to south line of Prince street, one thousand three hundred seventy-six and eight-tenths ($1,376\frac{8}{10}$) feet to a point in Neill St., in said Kittson's addition; thence by a curved line to the northward eight hundred fifty-seven and two-tenths ($857\frac{2}{10}$) ft. to the point of junction with the most westerly track (as now constructed) of the St. Paul, Minneapolis and Manitoba Railroad Company, between Fourth and Fifth streets, in said Kittson's addition, the total length of said Prince-street yard track "being two thousand two hundred and thirty-four, 2,234 feet, more or less, together with all said tracks, yards, depot grounds, depots, freight-houses, culverts, bridges, shops, buildings, sheds, and other structures belonging to or connected or used with said Prince-street yard track," with the easements and appurtenances thereunto belonging or in anywise appertaining.

Second. Also all that certain lines of railroad known as the "Blue Earth City branch," commencing in the main track of the railroad first hereinbefore described, at Lake Crystal, in the county of Blue Earth, thence extending southwardly via Garden City, Winnebago City, and Blue Earth City, to the south line of the State of Minnesota, a distance of forty-three and a half miles, more or less.

Third. Also that certain line of railroad known as the "Black Hills branch," commencing in the main track of the railroad first hereinabove described, at Heron lake, in the county of Jackson, in the State of Minnesota, thence extending westerly through the counties of Murray and Pipestone to the west line of the State of Minnesota, a distance of sixty-five miles, more or less, only forty-four miles of which, however, are now completed and in operation.

Fourth. Also that certain line of railroad known as the "Sioux Falls line," commencing in the main track of the railroad first hereinabove described, at a point three miles west of Worthington, in the county of Nobles aforesaid, thence extending westwardly through the counties of Nobles and Rock, in said State, and to and beyond Sioux Falls, in the county of Minnehaha, in the Territory of Dakota, through the said last-named county and the county of McCook, in said last-named Territory, to a point at or near the boundary line between sections thirteen and fourteen, in township 103, range 55 west, of the fifth principal meridian, a distance of ninety-eight miles, more or less, with a branch line to said railroad

last described commencing in the main track at Luverne, in said county of Rock, thence extending southerly, via range 45, on the boundary line between Iowa and Minnesota and Rock Rapids, in the county of Lyon and State of Iowa, to the Big Sioux river,
221 a distance of forty-six miles, more or less, of which twenty-eight miles are now completed and in operation, said last-named branch being known as the "Luverne and Rock Rapids branch."

Fifth. Also that certain line of railroad commencing at a point on the right bank of the Missouri river in the county of Dakota and State of Nebraska, opposite to or below the city of Sioux City aforesaid, thence extending southerly and west-ardly through the counties of Dakota, Dixon, Cedar, and Knox, to a point eighty-two miles distant from said point of commencement, twenty-six miles thereof, to Ponca, in the county of Dixon, being completed and in operation, said last-described road being known as the "Niobrara branch."

Also that certain line of railroad commencing at a point in said last-described road about ten miles distant from said point of commencement thereof, thence extending southerly via Oakland through the counties of Dakota, Dixon, Blackbird, Cuming, Burt, Washington, and Douglas to Faulkner street, in the city of Omaha, in said county of Douglas, a distance of one hundred and seventeen miles, more or less, a portion thereof, to wit, extending from Oakland to Omaha, having been constructed by the Omaha and Northern Nebraska Railroad Company, and the remainder thereof, to wit, from said Oakland to said point of divergence from said Niobrara branch, having been constructed by the Sioux City and Nebraska Railroad Company, the railroad last described from said point on the "Niobrara Branch" to Omaha, as aforesaid, being known as the "Omaha line."

Also that certain line of road extending from Emerson, on the said "Omaha line," to Norfolk, in the county of Madison, in the State of Nebraska, a distance of about fifty miles, the same being known now as the "Norfolk branch" and being graded between Emerson and Norfolk.

Sixth. Also all the grades, contemplated extensions, surveys, profiles, locations, and plats of said railways and any and all thereof, and all rights of way, depot grounds, and all lands used or convenient for use in connection with the operation and maintenance of the said railways and any and all thereof owned by the party of the first part, including all lands and lots in any manner acquired or held by the party of the first part at the city of St. Paul for shops, general offices, and other railway purposes, and all leasehold interests and terminal facilities and conveniences of every name and nature on the said main line and upon all said proprietary and connecting railroads, and all easements and appurtenances in any way appertaining or belonging to any of said railway property hereinabove described;

Including also all spur, side, and other tracks, and all yards, bridges, and other structures, and all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, coal-houses, round-

houses, and other buildings of every name, and *a*nture and all machine shops and other shops of every kind or description now owned by said party of the first part and used or convenient for use in connection with any of said railways hereinabove described:

Including all locomotives, tenders, cars, and other rooling stock, equipments, ferry-boats, transfer boats, and other craft of any and every name and nature, and all machinery, tools, implements, fu*ls*, supplies, and material for constructing, maintaining, operating, repairing, and replacing the said railway or railways and any and every part thereof, wherever the same may be located and situated, now owned by the party of the first part;

Including also all revenues, rents, rates, tolls, sums of
222 money, and income arising or to arise from said roads and property and every part, portion, and division thereof, together with all the franchises and corporate rights (including those in Iowa embraced in the deed from the Sioux City and St. Paul Railroad Company to the party of the first part, dated Sept. 1, 1879) possessed by the said party of the first part necessary or convenient to the full use and enjoyment of said roads, branches, and property in the said States and in said Territory, expressly excepting herefrom, however, the charter rights of the party of the first part within the State of Minnesota as the same now exist and its operating and other franchises within said State, and also further hereby expressly excepting herefrom the lands and property (not used or necessary or convenient to be used in connection with said railway and the operating and maintenance thereof) embraced in the agreement executed by the party of the first part on the 1st day of June, A. D. 1871, with W. R. Marshall, trustee, to secure certain special stock for the issue of which to the amount of two million four hundred thousand dollars provision was made in this agreement, which instrument was filed in the office of the secretary of the State of Minnesota on the 9th day of June, 1871, to which record reference is for greater certainty hereby made; and also further hereby expressly excepting herefrom the land grant and other lands and property embraced and intended to be embraced in and by a certain mortgage or agreement of trust bearing date July 31, 1879, and executed by the party of the first part herein to E. F. Drake and A. H. Wilder, as trustees, to which instrument reference is for greater certainty hereby made, it being the intention hereof to convey, whether specifically described herein or not, unto the party of the second part, its successors and assigns, all the lines of railway hereinabove described and save and hereinbefore expressly excepted the franchises necessary to the operation and maintenance thereof in Minnesota, Iowa, Dakota, and Nebraska, and all the lands, tenements, and property of every name and nature owned by the party of the first part and so connected with or related to said line of railway *and* to be in any degree essential or convenient to the most successful maintenance and operation as working railroads of any and *or* all thereof.

And the party of the first part, in consideration of the premises, covenants and agrees with the party of the second part, its succes-

sors and assigns, that it will at any and all times make, execute, and deliver unto the said party of the second part, its successors and assigns, such further deeds of conveyance, assignments, and other acts and evidences of transfer and assurance in the law for the better assuring unto the party of the second part, its successors and assigns, the said railways, equipments, and other property hereinbefore described or intended to be hereby conveyed as the said party of the second part may at any time reasonably request or demand.

And the said party of the second part, in consideration of the premises, hereby covenants and agrees for itself, its successors and assigns, forever with the party of the first part, its successors and assigns, that it will keep in its name, but on behalf of said party of the first part, the account of the gross earnings upon the said railroad from St. Paul to the Iowa State line, as required by section three (3) of chapter two (2) of chapter one (1) of the Special Laws of the said State of Minnesota for the year A. D. 1864, and will furnish to the said State the annual abstract or abstracts thereof required by said section three (3), and will duly perform all things necessary or required by law to be done in that behalf as
223 fully as said party of the first part might or could be lawfully required to do if this instrument had not been executed, and will seasonably pay to said State the annual per centum upon the gross earnings of said railroad from said city of St. Paul to said Iowa State line provided and required by said section three (3) aforesaid.

This deed of conveyance is made upon the express condition that the grantee herein, its successors and assigns, shall well and truly perform the covenant and agreement last above set forth and the whole thereof, and is made subject to the liens and encumbrances lawfully existing upon the said railway hereinbefore described, which encumbrances are as follows, to wit:

First. A certain mortgage or deed of trust dated July 1, 1879, executed by the party of the first part to the Central Trust Company of New York, as trustee, upon the railroads and other property therein described to secure the payment of the bonds of said party of the first part to the amount of one thousand dollars per mile of said road, as set forth therein, which said mortgage or deed of trust is of record in the office of the register of deeds in each of the counties in the said States and in the said Territory through or into which any of said roads or branches run or extend.

Second. A further deed of trust or "extention mortgage," so called, dated March 2, 1880, executed by and between the same parties, upon a portion of the railroads hereinbefore described, to secure the payment of a further amount or number of the same bonds in said original mortgage secured to the same extent per mile, it being a further or supplemental instrument provided for by the terms of the said last-described mortgage or trust deed, which said supplemental or extension mortgage is also recorded in the office of the register of deeds in each of the counties in which said original mortgage is recorded and in each of the other countries into or through which the railroads, branches, or extensions or any of the same run or extend.

Third. A further instrument executed by and between the same parties, dated on the 30th day of April, A. D. 1881, embracing the same railroads and property described and included in both said last-mentioned mortgages or deeds of trust, the same being executed pursuant to the provisions of said first-mentioned mortgage or deed of trust as an instrument of further assurance for the purpose of correcting an error in the recital of the date of the execution of said original mortgage and the bonds intended to be secured thereby, which last-mentioned instrument is recorded in the same place as said original and supplemental mortgages.

Fourth. A mortgage or deed of trust executed by said St. Paul, Stillwater and Taylor's Falls Railroad Company to Horace Thompson and William B. Dean, trustees, dated Jan. 1, 1878, of and upon the railroad hereinbefore described, from its terminus, at Westminster street, in the city of St. Paul, to Stillwater and Lake St. Croix, opposite Hudson, Wisconsin (excepting the said South Stillwater branch) to secure the sum of $324,800, according to the conditions of certain bonds, denominated "first-mortgage bonds," issied by said company; said mortgage is a first lien upon the property described therein, and was recorded in the office of the secretary of state of the State of Minnesota under date of October 15, 1878; to which said several mortgages or deeds of trust, as the same appear of record, reference is for greater certainity hereby made:

To have and to hold all and singular the above mentioned and described railways, rolling stock, premises, property, rights, franchises, privileges, and immunities, with all the easements and appurtenances, unto the said party of the second part, its successors
224 and assigns forever, subject, however, to all and singular the provisions and conditions hereof.

And the said party of the first part, for itself and its successors, hereby, in consideration of the premises, covenants with the said party of the second part, its successors and assigns, that it is seized of the railways, premises, property, and appurtenances, all and singular, hereinbefore described and referred to; that it has good right to sell and convey the same; that the said premises are free from all encumbrance save as hereinbefore stated and set forth; that the said party of the second part, its successors and assigns, shall quietly and peaceably enjoy and possess the same forever, and that the party of the first part will forever warrant and defend the title thereto against all lawful claims.

In witness whereof the said St. Paul and Sioux City Railroad Company hath caused its corporate seal to be hereto affixed and these presents to be subscribed by its president and secretary the day and year first above written.

SIOUX CITY AND ST. PAUL RAILROAD COMPANY,

[CORPORATE SEAL.] By H. H. PORTER, *President.*

Attest: GEO. A. HAMILTON, *Secretary.*

Signed, sealed, and delivered in presence of—

C. W. HILLARD.

A. W. FRENHOLM.

27—1148

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it remembered that on this 9th day of May, A. D. 1881, before me, a notary public in and for said county, personally came H. H. Porter, president, and Geo. A. Hamilton, secretary, of said St. Paul and Sioux City Railroad Company, they being to me personally known to have been such president and secretary at the date of the execution of the foregoing deed (and now to be such) and to be the persons who executed the same as such president and secretary (and whose names are thereto subscribed), and severally acknowledged the execution of the said deed by them as such president and secretary for and as the act and deed of said railroad company, and that the same was and is the voluntary act and deed of said company for the use and purpose therein expressed; that the seal affixed to said deed was at the execution thereof and now is the corporate seal of said railroad company, and that they executed the said deed and affixed thereto said corporate seal by authority and direction of said railroad Co. duly given.

I further certify that the foregoing deed is executed in accordance with the laws of the State of Minnesota.

And further certify that I qualified as notary public aforesaid on the 24th day of Jan., A. D. 1880, and that my official term expires on the 24th day of Jan., A. D. 1882.

In witness whereof I have hereunto set my hand and affixed my official seal this 9th day of May, A. D. 1881.

[NOTARY SEAL.] D. ELWELL,
Notary Public, Ramsey County, Minn.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

225 EXHIBIT 30.

Chapter 107.

S. C. & St. P. Land Grant Resumed.

An act to resume all lands and rights conferred upon the Sioux City and St. Paul Railroad Company by or under an act of Congress approved May 12, 1864, to lands not heretobefore earned by said company.

Whereas by an act of Congress approved May 12, A. D. 1864, entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of Minnesota, at such point as the said State might select, between the Big Sioux river and *and* the west fork of the Des Moines river, which grant was made to and accepted by the State of

Iowa upon the conditions, restrictions, and qualifications therein named; and

Whereas by an act of the General Assembly of the State of Iowa approved April 3, A. D. 1866, so much of the lands, interests, rights, powers, and privileges as were or might be conferred in pursuance of said acts of Congress to aid in the construction of the aforesaid road were disposed of, granted, and conferred upon the Sioux City — St. Paul Railroad Company; and

Whereas said act of Congress further provides that if the road accepting said grant is not completed within ten years from its acceptance thereof the lands thereby granted and not patented should revert to the State of Iowa for the purpose of securing the completion of said road; and

Whereas said Sioux City & St. Paul Company duly accepted said grant on the 20th day of September, A. D. 1866, but has failed to complete or cause to be completed any road on the line adopted therefor from Sioux City to Le Mars, in said State of Iowa, or any road in lieu thereof:

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That all lands and all rights to lands granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the State of Iowa which have not been earned by said railroad company by a compliance with the conditions of said grant be and same are hereby, absolutely and entirely resumed by the State of Iowa, and that the same be and are absolutely vested in said State as if the same had never been granted to said railroad company.

SEC. 2. This act, being deemed of immediate importance, shall take effect and be in force from and after its pub-ication in the Iowa State Register and the Sioux City Journal, newspapers published in the State of Iowa.

Approved March 16, 1882.

I hereby certify that the foregoing act was published in the Iowa State Register March 23, 1832, and the Sioux City Daily Journal March 19.

J. A. T. HULL,
Secretary of State.

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

226 EXHIBIT 31.

Chapter 71.

To Relinquish Certain Lands.

An act to relinquish and reconvey to the United States all lands and rights to lands granted to the State of Iowa by the act of Congress entitled "An act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in the State of Iowa," approved May 12th, 1864, which have not been earned pursuant to the provisions of said act.

Whereas by an act of Congress approved May 12th, 1864, entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of Minnesota, at such point as the State might select, between the Big Sioux and the west fork of the Des Moines river-, which grant was made to and accpeted by the State of Iowa upon the conditions, restrictions, and qualifications therein named; and

Whereas by acts of the General Assembly of the State of Iowa approved April 3d, A. D. 1866, and April 20th, A. D. 1866, the lands, rights, powers, duties, and trusts conferred upon the State of Iowa by said act of Congress were duly accepted on the part of the State of Iowa; and

Whereas by an act of the General Assembly of the State of Iowa approved April 3d, 1866, so much of the lands, interests, rights, powers, and privileges as were or might be conferred in pursuance of said act of Congress to aid in the construction of the aforesaid road were disposed of, granted, and conferred upon the Sioux City & St. Paul -ailroad Company; and

Whereas said railroad company duly accepted said grant, but failed to complete said railroad as required by the terms and conditions of said grant; and

Whereas by an act of the General Assembly of the State of Iowa approved March 16th, 1882, all lands and all rights to lands granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the State of Iowa which had not been earned by said railroad company by compliance with the conditions of said grant were absolutely and entirely resumed by the State of Iowa and vested in said State as absolutely as though the same had never been granted to said railroad company; and

Whereas it is desireable that all lands and rights to lands resumed by the State of Iowa as aforesaid should be conveyed to and vested in the United States, to the end that such lands shall be made subject to the use of actual settlers, as provided by the acts of Congress relating thereto: Now, therefore,

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That all lands and rights to lands resumed and intended to be resumed by chapter one hundred and seven (107) of the acts of the Nineteenth General Assembly of the Syate of Iowa are hereby relinquished and conveyed to the United States.

SEC. 2. The governor of the State of Iowa is hereby authorized and directed to certify to the Secretary of the Interior all lands which have heretofore been patented to the State to aid in the construction of said railroad and which have not been patented by the State to the Sioux City & St. Paul Railroad Company, and
227 the list of lands so certified by the governor shall be presumed to be the lands relinquished and conveyed by section one of this act: Provided that nothing in this section contained shall be construed to apply to lands situated in the counties of Dickinson and O'Brien.

SEC. 3. This act, being deemed of immediate importance, shall t*kae* effect and be in force from and after its publication in the Iowa State Register, a newspaper published at Des Moines, Iowa, and the Sioux City Journal, a newspaper published at Sioux City, Iowa.

Approved March 27, 1884.

I hereby certify that the foregoing act was published in the Iowa State Register and Sioux City Daily Journal April 2, 1884.

J. A. T. HULL,
Secretary of State.

(Endorsed:) No. 104. Equity. Filed June 12, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

228 Ex.

Statement

Lands belonging to Sioux City & St. Paul R. R.

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
S. ½ N. W. ¼	9	95	40	80	15 56	1608	M'ch 30, '86	8 92 8 36	1106 1108 311
Contracted Aug. 29,'87, Oscar F. Morgan.									
S. W. ¼	"	"	"	16.0	31 12	1608	"	17 84 16 72	1107 1109 1110 311
Contracted Aug. 29,'87, B. F. Holton.									
S. W. ¼ N. W. ¼	7	97	40	36.50	4 88	1609	"	3 32 3 07	1111 314
N. W. ¼	5	95	41	158.64	24 87	1610	"	21 52 19 97	1143 289
Contracted Oct. 24, '87, W. B. Bowne & W. H. Sleeper.									
S. W. ¼	5	"	"	160	25 03	1610	"	21 53 19 98	1143 289
Contracted Oct. 21, '87, W. B. Bowne & W. H. Sleeper.									
N. E. ¼	7	"	"	160	25 02	1610	"	21 61 20 36	1144 1145 1112 1122 289
Contract, James E. Gere, Jan. 1, 1889.									
N. W. ¼	7	"	"	141.02	22 43	1610	"	19 34 17 82	1122 1146 1147 1112 289
Contract, Scott Logan, May 27, -889.									
S. W. ¼	7	"	"	140.98	22 42	1610	"	19 40 17 81	1148 1149 1150 1112 289
Contract, Scott Logan, May 27, '89.									
S. E. ¼	7	"	"	160	25 02	1610	"	21 61 20 36	1151 1152 1122 1153 289
Contract, W. L. Ayers, Nov. 26, '88.									
S. ½ N. E. ¼	11	"	"	80	15 56	1610	"	10 31 1 60 8 45	1154 1155 3526 316
S. ½ N. W. ¼	"	"	"	80	15 56	1610	"	10 81 1 60 8 45	1123 1156 3526 316
S. W. ¼	"	"	"	166	31 12	1610	"	21 63 3 20 16 90	1157 1123 1114 1159 3526 316
229									
S. E. ¼	11	95	41	160	31 12	1610	M'ch 30, '86	21 62 3 20 16 90	1133 1158 1160 1161 3526 316

32.

of Taxes.

Co. situated in O'Brien county, State of Iowa.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Jan. 5, 1888 Feb. 21, 1887									
Jan. 5, 1888 F. 21, 1887									
Jan. 5, '88 Feb. 21, '87	5 91	1741	April 16, '88	5 88	1070	M'ch 20, '89			
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87	39 65	1742	April 16, '88	37 20	1072	M'ch 20, '89			
Jan. 5, '88 Feb. 21, '87	39 66	1742	April 16, '88	37 56	Cert. 129 130 131 132	Dec. 2, '89			
Jan. 5, '88 Feb. 21, '87	39 65	1742	April 16, '88	33 24	1072	M'ch 20, '89			
Jan. 5, '88 Feb. 21, '87	39 66	1742	April 16, '88	41 92	Cert. 133 134 135 136	Dec. 2, '89			
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	19 78	1742	April 16, '88	18 25	1072	M'ch 20, '89	½ 8 22	236	Feb. 12, 1890
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	19 78	1742	April 16, '88	13 25	"	"	½ 8 22	236	Feb. 12, '90
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	39 56	1742	April 16, '88	36 50	"	"	½ 16 86	236	Feb. 12, '90
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	39 56	1742	April 16, '88	36 50	1072	M'ch 20, '89	½ 16 37	236	Feb. 12, '90

Ex. 32, *Statement of*

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
									1124
								21 63	1162
								3 20	1163
N. E. ¼	13	95	41	160	25 03	1610	M'ch 30, '86	16 90	3526
									316
									1164
									1165
								21 62	1166
								3 20	1113
N. W. ¼	"	"	"	160	25 02	"	"	16 90	3526
									316
									1142
									1141
								21 62	1140
								3 20	1139
S. W. ¼	"	"	"	160	25 03	"	"	16 90	3526
									316
									1138
									1113
								21 61	1162
								3 20	1168
S. E. ¼	"	"	"	160	25 02	"	"	16 90	3526
Contract, J. T. Daniels, Aug. 26, 1887.									316
									1169
									1170
								21 61	1115
								3 20	1134
N. E. ¼	15	"	"	160	25 03	"	"	16 90	3526
									316
									1171
									1172
								21 61	1125
								3 20	1173
N. W. ¼	"	"	"	160	25 02	"	"	16 90	3526
									316
									1174
									1175
								21 62	1176
								3 20	1177
S. W. ¼	"	"	"	160	25 03	"	"	16 90	3526
									316
								21 63	1178
								3 20	1179
S. E. ¼	"	"	"	160	25 02	"	"	16 90	3526
Contract, Christopher Fife, M'ch 15, 1887.									316
									1126
								19 58	1190
								3 20	1135
N. W. ¼	19	"	"	143.37	22 67	"	"	15 18	3526
Contract, Gus. Bollenbach, June 4, 1887.									316
									1127
									1116
								19 80	1191
								3 20	1192
S. W. ¼	"	"	"	145.39	22 94	"	"	15 18	3526
									316
									1202
								5 40	1128
								16 21	1117
								3 20	1136
N. E. ¼	23	"	"	160	25 03	"	"	16 90	3526
230									316
									1203
									1229
								21 61	1204
N. W. ¼	23	95	41	160	25 02	1610	M'ch 30, '86	16 90	1205
Contract, Chris. Hanz, M'ch 22, 1887.									316

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	36 99	1743	April 16, '88	36 60	1072	M'ch 20, '89	½ 16 36	236	Feb. 12, '90
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	36 99	1743	"	36 60	"	"	½ 16 37	236	Feb. 12, '90
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	36 99	1743	"	36 61	"	"	½ 16 37	236	Feb. 12, '90
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87									
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	39 65	1743	"	35 31	1072	M'ch 20, '89	½ 16 36	236	Feb. 12, '90
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	36 68	1743	"	35 31	"	"	½ 16 37	236	"
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	36 68	1743	"	35 32	"	"	½ 16 37	"	"
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87									
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87									
Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	34 98	1743	"	33 75	1072	"	½ 15 04	236	Feb. 12, '90
Jan. 5, '88 Jan. 5, '88 Dec. 17, '87 Feb. 21, '87	36 68	1743	"	34 28	1072	"	½ 16 36	236	Feb. 12, '90
Jan. 5, '88 Feb. 21, '87									

Ex. 32, *Statement of*

	Description.	Sec.	Tp.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
	S. W. ¼	23	95	41	160	25 03	1610	M'ch 30, '86	18 20 16 90	3511 316
	Contract, Hector Cowan, M'ch 15, 1887.									
	S. E. ¼	"	"	"	160	25 02	"	"	21 64 16 90	1130 1117 1206 316
	Contract, Ole Tjoisen, M'ch 22, 1887.									
	N. ½ N. E. ¼	25	"	"	80	12 51	"	"	10 82 8 45	1206 1207 316
	Ole Oleson, M'ch 21, 1887.									
	S. ½ N. E. ¼	"	"	"	80	12 51	"	"	10 81 8 45	1208 1209 316
	Contract, Ole Oleson, M'ch 21, '87.									
	N. W. ¼	"	"	"	160	25 03	"	"	21 62 16 90	1210 1211 1131 1212 316
	Contract, Andrew Tow, M'ch 15, '87.									
	S. W. ¼	"	"	"	160	25 03	"	"	21 62 16 90	1137 1118 1213 1214 316
	Contract, Andrew Tow, M'ch 15, '87.									
	S. E. ¼	"	"	"	160	25 02	"	"	21 65 16 90	1118 1215 1132 1216 316
	Contract, Ole Oleson, M'ch 21, '87.									
	N. E. ¼	27	"	"	160	25 03	"	"	5 40 16 22 16 90	1521 1217 1218 1219 316
	Contract, Thomas S. Heggan, Sept. 1, '87.									
	N. W. ¼	"	"	"	160	25 02	"	"	18 20 16 90	3512 316
	Contract, Walter Cowans, M'ch 15, '87.									
	S. W. ¼	"	"	"	160	25 03	"	"	21 61 16 90	1120 1121 1220 1221 316
	Contract, Ole Oleson.									
	S. E. ¼	"	"	"	160	25 02	"	"	21 65 16 90	1222 316
	Contract, Chester G. Peck, M'ch 22, '87.									
231	N. E. ¼ N. W. ¼ Deeded Angie Valleau Jan. 4, '87.	3	96	41	39.94	12 28	1611	M'ch 30, '86		
	S. E. ¼ N. E. ¼ Contract, G. S. Moreau, July 6, 1887.	15	"	"	40	8 38	1612	"	4 71	291
	S. W. ¼ S. W. ¼ Contract, Elizabeth Hacker, Jan. 8, '87; deeded Sept. 21, '88.	13	97	41	40	9 71	1613	"		
	E. ½ S. W. ¼ Sold and deeded Jan. 5, '84, to Chas. H. Power.	35	"	"	80					

Taxes—Continued.

When paid	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Dec. 5, '87 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Dec. 5, '87 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Feb. 21, '87									

Ex. 32, *Statement of*

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
N. E. ¼ S. E. ¼ ..... Sold and deeded Jan. 5, '84, to Chas. H. Power.	35	97	41	40					
N. E. ¼ ..... Contract, Harker & Green, Aug. 27, '87.	1	95	42	162.39	42 16	1616	M'ch 30, '86	27 28 25 46	1273 1274 294
N. W. ¼ ..... Contract, Harker & Greene, Aug. 27, '87.	1	"	"	159.87	42	"	"	26 86 25	1274 1275 294
S. W. ¼ ..... Contract, Harker & Greene, Aug. 27, '87.	1	"	"	160	42	"	"	26 86 25	1275 1276 1277 294
S. E. ¼ ..... Contract, Harker & Green, Aug. 27, 1887.	1	"	"	160	42	"	"	26 86 25	1276 1277 294
N. E. ¼ ..... Contract, E. S. Money, July 9, 1887.	5	"	"	153.91	40 34	"	"	6 25 6 72 12 97 24 65	1364 1264 1278 1279 294
N. ¼ N. W. ¼ ..... Contract, Fredrick H. Singer, Jun- 27, 1887.	"	"	"	76.91	20 18	"	"	12 96 12 32	1280 1281 294
S. ¼ N. W. ¼ ..... Contract, John Schneider, May 21, 1887.	"	"	"	80	21	"	"	6 71 6 72 6 71 12 33	1270 1261 1282 294
232									
S. W. ¼ ..... Contract, Ed. C. Brown, Oct. 13, 1888.	5	95	42	160	42 00	1616	M'ch 30, '86	26 84 24 66	1282 1284 1285 1286 294
N. ½ S. E. ¼ ..... Contract, Fred. A. Beers, July 2, 1887.	"	.....	.....	80	21 00	1616	"	13 42 12 33	1287 1288 294
S. E. ¼ S. E. ¼ ..... Contract, Fred. A. Beers, July 2, 1887.	"	.....	.....	40	10 50	1616	"	6 72 6 16	1290 294
S. E. ¼ N. W. ¼ ..... C., A. & A. Hoag, June 18, 1887.	7	.....	.....	40	.....	.....	.....	6 09	294
W. ½ N. W. — ..... C., A. & A. Hoag, June 18, 1887.	7	.....	.....	70.41	.....	.....	.....	8 03 10 97	1292 1293 294
W. ½ S. E. ¼ ..... C., J. N. Calin, July 9, 1887.	"	.....	.....	80	.....	.....	.....	12 18	294
E. ½ S. E. ¼ ..... C., Leonard Lamkin, June 11, 1887.	"	.....	.....	80	20 95	1616	M'ch 30, '86	13 05 12 18	1293 1294 294

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	.....	.....	.....	½ 16 28	238	Feb. 12, '90
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	.....	.....	.....	½ 16 27	238	"
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	.....	.....	.....	½ 16 27	238	"
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	.....	.....	.....	½ 16 27	238	"
Jan. 5, '88 Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, 1888 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87	45 74	1744	April 16, '88						
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	9 48	Cert. 139	Dec. 2, '89			
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	4 74	Cert. 139	Dec. 2, '89			
Feb. 21, '87	.....	.....	.....	10 28	Cert. 141	Dec. 2, '89			
Jan'y 5, '88 Feb. 21, '87	.....	.....	.....	9 01 *	Cert. 140	Dec. 2, '89			
Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									

* S. W. — N. W. ¼.

Ex. 32, *Statement of*

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
E. ½ N. E. ¼ ..... C., Enoch Philley, Jun 4, 1887.	9	.....	.....	80	20 95	1616	M'ch 30, '86	13 44 12 50	1297 1298 294
W. ½ N. E ¼ ..... C., Florence E. Mo:felt, Jun- 4, 1887.	"	....	.....	80	20 96	"	"	13 42 12 50	1296 1297 294
N. W. ¼ ..... C., Ehmira Kneppler, Jun- 21, 1887.	"	.....	.....	160	41 92	"	"	26 86 25	1299 294
S. W. ¼ ..... C., Chas. Litz, July 2, 1887.	"	.....	.....	160	41 92	"	"	26 86 25	1300 294
S. E. ¼ ..... C., Jno. W. McKillip, Jun- 11, 1887. 233	"	....	.....	160	41 92	"	"	20 15 6 72 25	1301 1302 1303 1264 294
S. ½ N. E. ¼ ..... C., G. W. Watts, Dec. 8, 1888.	11	95	42	80	20 96	1616	M'ch 30, '86	13 44 12 50	1304 1305 294
S. ½ N. W. ¼	"	"	"	80	20 96	"	"	6 71 6 72 12 50	1306 1261 294
S. W. ¼ ..... C., H. C. Lane, Oct. 15, 1888.	"	"	"	160	41 92	"	"	20 15 6 72 25	1307 1308 1309 1264 294
S. E. ¼ ..... C., H. C. Lane, Oct. 15, 1888.	"	"	"	160	41 92	"	"	20 16 6 71 25	1310 1311 1312 1262 997
N. E. ¼ ..... C., Daniel Beham, Jun- 21, 1887.	15	"	"	160	41 92	"	"	13 44 13 43 25	1314 1315 1265 1271 297
E. ½ N. W. ¼ ..... C., J. W. McKillip, Sept. 3, 1887.	"	"	"	80	20 96	"	"	6 72 6 71 12 50	1316 1265 297
W. ½ N. W. ¼ ..... C., J. W. McKillip, Sept. 3, 1887.	"	"	"	80	20 96	"	"	13 44 12 50	1317 1318 297
S. W. ¼ ..... C., J. P. Enright, Sept. 12, 1887.	"	"	"	160	41 92	"	"	26 88 25	1319 1320 1321 1322 297
W. ½ S. E. ¼ ..... C., Browne & Sleeper, Oct. 24, 1887.	"	"	"	80	20 96	"	"	6 72 6 71 12 50	1270 1271 297
E. ½ S. E. ¼ ..... C., Browne & Sleeper, Oct. 24, 1887.	"	"	"	80	20 95	"	"	13 43 12 50	1270 1271 297

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '888 Feb. 21, '87	22 87	1744	April 16, '88	20 17	Cert. 145	Dec. 2, '89			
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87	22 87	1744	April 16, '88	18 17	1071	M'ch 20, '89	½ 8 21	238	Feb. 12, '890
Jan. 5, '88									
Jan. 5, '88 Feb. 21, '87	45 74	1744	April 16, '88						
Jan. 5, '88									
Jan. 5, '88 Feb. 21, '87	45 74	1744	April 16, '88						
Jan. 5, '88									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									

Ex. 32, *Statement of*

Description.	Sec.	Tp.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
								20 16	1323 1324 1325
N. E. ¼	17	95	42	160	41 92	1616	M'ch 30, '86	6 71 25	1266 297
C., G. & O. Callimus, June 14, 1887.									
								13 43	1326
E. ½ N. W. ¼	"	"	"	80	20 96	"	"	12 50	297
C., Dora Berbow, Aug. 20, 1887.									
234									
								13 43	13 27
W. ½ N. W. ¼	17	95	42	80	20 95	1616	M'ch 30, '86	12 50	2 97
C., George Benbow, June 4, 1887.									
									1328 1329 1330
								20 16 6 72	1266
S. W. ¼	"			160	41 92	"	"	25	297
C., Henry Runger, June 25, 1887.									
								6 72	1332
								6 72	1262
W. ½ S. E. ¼	"			80	20 96	"	"	12 50	297
C., Byron C. Donovan, Aug. 29, 1887.									
									1331 1333
E. ½ S. E. ¼	"			80	20 96	"	"	13 44 12 50	297
C., Christ. Kem, Aug. 29, 1887.									
								6 72	1334
								6 71	1271
E. ½ N. E. ¼	19	"	"	80	20 95	"	"	12 32	297
C., John Woods, Oct. 22, 1888.									
								6 26	1335
N. W. ¼ S. W. ¼	"	"	"	40				6 16	297
C., Valentine Koehler, Jun-25, 1887.									
								6 72	1336
S. E ¼ S. W. ¼	"	"	"	80				12 33	297
C., J. M. Carlin, July 9, 1887.									
								6 72	1337
W. ½ S. E. ¼	"			80				12 33	297
C., John Woods, Oct. 22, 1888.									
								6 72	1338
								6 71	1266
E. ½ S. E. ¼	"			80	20 96	1616	M'ch 30, '86	12 32	297
C., Theodore Wells, June 11, 1887.									
								6 72	1341
								6 72	1340
								6 72	1339
								6 71	1267
N. E. ¼	21	"	"	160	41 92	1616	"	25	297
C., Alfred Smith, July 7, 1887.									
									1342
E. ½ N. W. ¼	"			80	20 95	"	"	13 44 12 50	1343 297
C., Judd Griggs, June 25, 1887.									
									1343
W. ½ N. W. ¼	"			80	20 96	"	"	13 44 12 50	1344 297
C., Jerry Griggs, June 2, 1887.									

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87	23 54	1744	April 16, '88						
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87	19 91	1744	Apr. 16, '88						
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Jan. 5, '88									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									

Ex. 32, *Statement of*

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
235									
								13 44	1346
								6 72	1347
								6 71	1267
S. W. ¼	21	95	42	160	41 92	1616	M'c- 30, '86	25	1262
C., C. H. Arfman, Sept. 6, 1887.									297
									1348
									1349
								20 16	1350
								6 71	1267
S. E. ¼	"	"	"	160	41 92	"	"	25	297
C., Sophie Buck, July 12, 1887.									
									1355
								26 88	1352
									1353
N. E. ¼	23	"	"	160	41 92	"	"	21 48	1354
C., Wm. Douglas, Oct. 31, '87.									314
									1355
								13 44	1356
								6 72	1263
								6 71	1268
N. W. ¼	"	"	"	160	41 92	"	"	21 48	314
C., Wm. Douglas, Oct. 31, '87.									
								20 86	1357
S. W. ¼	"	"	"	160	41 92	"	"	21 48	317
C., Wm. Douglas, Oct. 31, 1887.									
									1358
									1359
								20 14	1360
								6 71	1268
S. E. ¼	"	"	"	160	41 91	"	"	21 48	314
C., Wm. Douglas, Oct. 31, 1887.									
									1361
								13 42	1362
								6 72	1268
N. E. ¼	27	"	"	160	41 92	"	"	21 48	314
C., Wm. Douglas, Oct. 31, 1888.									
								6 71	1363
								6 71	1269
								13 42	1263
								6 71	1272
N. W. ¼	"	"	"	160	41 92	"	"	21 48	314
C., Wallace Lasher, June 16, '87.									
S. W. ¼	"	"	"	160	41 92	"	"	21 48	314
C., C. O. Bartlett & K. F. Snow, July 12, '87.									
									1365
									1366
									1367
								26 84	1368
S. E. ¼	"	"	"	160	41 91	"	"	21 48	314
C., Wm. Douglas, Oct. 31, 1888.									
									1369
N. ½ S. W. ¼	29	"	"	80	20 96	"	"	13 42	1370
C., Simon Powers, June 25, '87.								10 74	314
									1371
								13 42	1372
S. ½ S. W. ¼	"	"	"	80	20 96	"	"	10 74	314
C., Thomas Barry, June 25, 1887.									
236									
								13 42	1373
								6 71	1374
								6 72	1272
S. E. ¼	29	95	42	160	41 92	1616	M'ch 30, '86	21 48	1269
C., Max Thorman, June 4, 1887.									314

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 18—.	No. of receipt.	When paid.
Jan. 5, '88									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, 1888									
Jan. 5, 1888									
Feb. 21, 1887	.....	.....	.....	38 18	Cert. 147	Dec. 2, '89			
Jan. 5, 1888									
Feb. 21, '87	45 73	1744	April 16, '88						
Jan. 5, 1888									
Jan. 5, 1888									
Jan. 5, 1888									
Feb. 21, 1887	46 03	1745	Apr'l 16, 1888						
Jan. 5, 1888									
Feb. 21, 1887	45 74	1745	Apr'l 16, 188-						
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87	45 74	1745	Apr'l 6, '88						
Jan'y 5, 1888									
Jan'y 5, '88									
Feb. 21, 1887	49 39	1745	April 16, '88						
Jan. 5, 1888									
Jan. 5, 1888									
Jan. 5, 1888									
Feb. 21, '87									
Feb. 21, '87									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87	45 74	1745	Apr. 16, '86						
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									

Ex. 32, *Statement of*

Description.	Sec.	Tp.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
E. ½ N. E. ¼ ..... C., Frank Hollis, June 2, 1887.	31	95	42	80	20 95	1616	M'ch 30, '86	10 74	314
								6 14	297
S. E. ¼ N. W. ¼ ..... C., H. E. Thayer, M'ch 15, 1887.	"	"	"	40	.....	.....	.....	6 31	1376
								4 51	1386
								4 51	1385
								4 72	1384
								4 95	1377
N. E. ¼ ..... C., Harvey Virgil, June 20, 1887.	3	96	42	163.32	28 54	1619	M'ch 30, '86	15 80	299
								9 26	1387, 1389
E ½ N. W. ¼ ..... C., Elmer A. Nelson, May 18, '87.	"	.....	.....	81.50	14 27	"	"	7 90	299
								9 13	1389, 1388
W. ½ N. W. ¼ ..... C., Edwin McFarland, Feb. 24, '87.	"	.....	.....	81.43	14 26	"	"	7 90	299
								5 25	1380
								13 55	1379
S. W. ¼ ..... C., Wm. A. Pottinger, July 9, 1887.	"	.....	.....	160	27 97	"	"	15 79	299
								18 08	1390, 1391, 1392, 1393
S. E. ¼ ..... C., John McCartney, May 17, 1887.	"	.....	.....	160	27 97	"	"	15 79	299
								11 22	1394, 1395
								5 25	1380
								4 95	1377
S. W. ¼ ..... C., Rachael B. Calvert, Nov. 12, 1887.	5	"	"	160	47 63	1617	"	19 52	298
								16 83	1396, 1397, 1398
								5 25	1380
S. E. ¼ ..... C., Emily Powers, Aug. 26, 1887.	"	"	"	160	47 63	1617	"	19 52	298
N. W. ¼ N. E. ¼ ..... D., Geo. I. Seney, Sept. 10, 1875.	7	"	"	40	.....	.....	.....	.....	.....
								9 04	1400, 1401
E ½ S. E. ¼ ..... C., Theodore Dochendorf, Nov. 7, '87.	"	"	"	80	13 98	1619	M'ch 30, '86	7 82	299
237 E. ½ N. E. ¼ ..... C., Chas. W. Toothaker, M'ch 19, 1887.	11	96	42	80	13 98	1619	M'ch 30, '86	7 82	299
								4 95	1377
								4 52	1402
W. ½ N. E. ¼ ..... C., Geo. McKenna, M'ch 19, 1887.	"	"	"	80	13 99	"	"	7 82	299
								9 04	1403
E. ½ N. W. ¼ ..... C., Carrie Griffiths, May 17, 1887.	"	"	"	80	13 98	"	"	7 82	299
								9 04	1403
W. ½ N. W. ¼ ..... C., E. H. McClellan, July 2, 1887.	"	"	"	80	13 99	"	"	7 82	299

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 18—.	No. of receipt.	When paid.
Feb. 21, '87									
Feb. 21, '87 Jan. 5, '88									
Jan. 5, '88 Jan. 5, '88 Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87	19 41	443	Dec. 2, '89						
Jan. 5, '88 Feb. 21, '87									

Ex. 32, *Statement of*

Description.	Sec.	Tp.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
S. W. ¼ ..... C., Geo. H. Whitmore, June 4, 1887.	11	96	42	160	27 96	1619	M'ch 30, '86	18 08 15 65	1404 299
N. ½ S. E. ¼ ..... C., Daniel M. Merwin, M'ch 19, 1887.	"	"	"	80	13 98	"	"	4 52 4 52 7 82	1381 1405 299
S. ½ S. E. ¼ ..... C., Helen M. Harkin, Dec. 5th, 1888.	"	"	"	80	13 99	"	"	9 04 7 82	1406 299
N. E. ¼ ..... C., W. H. Sleeper and Walter B. Bowne, Feb. 21, '87.	15	"	"	160	27 97	"	"	18 08 15 65	1407 299
N. W. ¼ ..... C., W. H. Sleeper & W. B. Bowne, Feb'y 24, 1887.	"	"	"	160	27 97	"	"	9 04 9 04 15 64	1408 1407 299
S. W. ¼ ..... C., Walter B. Bowne, Feb'y 24, 1887.	"	"	"	160	27 97	"	"	18 08 15 64	1409 299
S. E. ¼ ..... C., W. H. McNutt, M'ch 17, 1887.	"	"	"	160	27 96	"	"	4 52 13 56 15 64	1381 1410 1411 1413 299
238 N. W. ¼ ..... C., W. B. Bowne and W. H. Sleeper, Feb. 24, '87.	17	96	42	160	27 97	1619	M'ch 30, '86	18 08 15 64	1412 299
S. W. ¼ ..... C., Geo. Memig, M'ch 8, 1887.	"	"	"	160	27 97	"	"	15 64	299
S. W. ¼ N. E. ¼ ..... D., W. A. Hurlbut, June 6, 1887.	19	"	"	40	.....	.....	.....	.....	.....
S. E. ¼ N. W. ¼ ..... D., H. A. Hurlbut, June 6, 1887.	"	"	"	40	.....	.....	.....	.....	.....
N. W. ¼ N. W. ¼ ..... D., H. A. Hurlbut, June 6, 1877.	"	"	"	36.17	.....	.....	.....	.....	.....
N. E. ¼ ..... C., John A. Harkin, July 11, 1887.	23	"	"	160	27 97	1619	M'ch 30, '86	18 08 15 64	14 14 299
E. ½ N. W. ¼ ..... C., Geo. Hudson, May 27, 1887.	"	.....	.....	80	13 98	"	"	9 04 7 82	1415 299
W. ½ N. W. ¼ ..... C., Geo. Hudson, May 27, '87.	"	.....	.....	80	12 99	"	"	9 04 7 82	1415 299
S. W. ¼ ..... C., Wm. Harker and ——.	"	.....	.....	160	27 97	"	"	18 08 15 64	1416 299
N. ½ S. E. ¼ ..... C., John A. Harkin, July 11, 1887.	"	.....	.....	80	13 98	"	"	9 04 7 82	1417 299
S. ½ S. E. ¼ ..... C., Charlie H. Harkin, July 11, 1887.	"	.....	.....	80	13 98	"	"	9 04 7 82	1417 299
239 N. E. ¼ ..... C., Jacob Shelzer, Feb'y 21, 1887.	29	96	42	160	27 97	1619	M'ch 30, '86	18 08 15 64	1419 299

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, 1888 Feb. 21, '87	15 88	1746	Apr. 16, '88						
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	.....	.....	.....	½ 19 92	240	Feb'y 12, '90
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									

Ex. 32, *Statement of*

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
								18 08	1420
N. W. ¼	29	96	42	160	27 96	1619	M'ch 30, '86	15 64	299
C., Jacob Shelzer, June 4, 1887.									
								{ 4 52	1382
								{ 13 56	{ 1421
									{ 1422
									{ 1423
S. W. ¼	"	"	"	160	27 97	"	"	15 64	299
C., James Potter, M'ch 19, 1887.									
									{ 1424
									{ 1425
									{ 1426
								18 08	{ 1427
S. E. ¼	"	"	"	160	27 97	"	"	15 64	299
C., John H. Browkaw, Aug. 27, 1887.									
E. ½ S. E. ¼	31	"	"	80	13 98	"	"	7 82	299
C., John Laugenhorst, M'ch 19, 1887.									
								{ 4 52	1382
								{ 4 52	{ 1428
								{ 9 04	{ 1429
N. E. ¼	33	"	"	160	27 97	"	"	15 64	299
C., Marshall A. Brown, Oct. 15, '87.									
								4 52	1383
								9 04	1430
N. W. ¼	"	"	"	160	27 97	"	"	15 64	299
C., Geo. Lile, Dec. 7, 1888.									
									1378
									{ 1431
								{ 9 04	{ 1432
								{ 13 56	{ 1433
S. W. ¼	"	"	"	160	27 96	"	"	15 64	299
C., James B. Frisbie, Oct. 24, 1887.									
								4 52	1383
									{ 1435
								13 56	{ 1436
									{ 1434
S. E. ¼	"	"	"	160	27 97	"	"	15 64	299
C., William Schneider, May 17, '87.									
									{ 1445
									{ 1446
								20 05	{ 1447
									{ 1448
N. E. ¼	3	97	42	138.90	30 02	1620	"	18 10	301
C., F. & Chars. Dougherty, June 11, 1887.									
									{ 1448
								20 71	{ 1440
									{ 1437
N. W. ¼	"	"	"	136.70	29 57	"	"	18 10	301
C., James Custinger, June 11, 1887.									
									{ 1449
								22 81	{ 1437
									{ 1450
									{ 1451
S. W. ¼	"	"	"	160	34 57	"	"	21 12	301
C., J. H. Basco, June 21, 1887.									
240									
									{ 1452
									{ 1410
								21 75	{ 1453
S. E. ¼	3	97	42	160	34 57	1620	M'ch 30, '86	21 12	{ 1437
C., Florence Sullivan, June 21, '87.									301
S. W. ¼ N. E. ¼	7	"	"	40	.....	.....	.....	.....	.....
C., M. H. Damon, June 18, 1888.									

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 18—.	No. of receipt.	When paid.
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	35 39	Cert. 204	Dec. 2, '89			
Feb'y 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87	31 74	1746	April 16, '88	38 01	Cert. 206	Dec. 2, '89			
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87	.....	.....	.....	31 18	Cert. 266	Dec. 2, '89			
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									

Ex. 32, *Statement of*

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
N. W. ¼ S. E. ¼ ..... C., M. H. Damon, June 18, 1888.	7	97	42	40	.....	.....	.....	....	.....
N. E. ¼ N. W. ¼	"	"	"	40	.....	.....	.....	5 70	1441
								17 11	1457
									1458
N. E. ¼ ..... C., John Beacom, June 11, 1887.	9	"	"	160	34 56	1620	M'ch 30, '86	21 12	301
N. W. ¼ ..... C., John McGrath, Sept. 13, 1887.	"	"	"	160	34 56	"	"	22 81	1459
								21 12	301
S. W. ¼ ..... C., John McGrath, Sept. 13, 1887.	"	"	"	160	34 56	"	"	22 81	1460
								21 12	301
S. E. ¼ ..... C., Thomas Beacom, June 11, 1887.	"	"	"	160	34 56	"	"	22 81	1461
									1462
									1437
								21 12	1463
									301
N. ½ E. of r't of way ..... C., Patrick McGrath, June 14, '87.	17	"	"	151.59	33 70	"	"	22 81	1465
								19 78	301
N. ½ of N. ½ of W. of r't of way... C., Ellen M. Childs, Sept. 11, 1888.	"	"	"	87.63	19 44	"	"	11 40	1466
								11 54	1467
									301
S. ½ N. W. ¼ W. of r't of way and S. W. ¼ ..... C., Georgia J. Robertson, Sept. 11, 1888.	"	"	"	221.07	50 54	"	"	32 27	1468
									1469
									1470
									1471
								28 95	1472
									301
S. E. ¼ ..... C., M. J. McGrath, April 30, 1887.	"	"	"	160	34 56	"	"	22 82	1473
								20 96	301
R. of way across.....	"	"	"	19.71	.....	.....	....	.....	.....
241									
E. ½ N. E. ¼ & E. ½ S. E. ¼..... C., Winfield S. Lamb and O. M. Barret, Feb. 11, '87.	19	97	42	160	34 57	1620	M'ch 30, '86	22 05	1475
								20 45	301
N. E. ¼ ..... C., W. B. Bowne & W. H. Sleeper, Feb'y 12, '87	25	"	"	160	34 56	1620	"	22 81	1480
								21 12	301
N. W. ¼ ..... C., Thos. Burns, Jr., May 18, '87.	"	"	"	160	34 56	"	"	22 81	1481
								21 12	301
S. W ¼ ..... D., Timothy Donohue, May 18, '87.	"	"	"	160	34 56	"	"	21 12	301
S. E. ¼ ..... C., W. B. Bowne & W. H. Sleeper, Feb'y 12, '87.	"	"	"	160	34 56	"	"	22 81	1482
								21 12	301
S. ½ ..... D., J. W. Bishop, July 5, 1882.	29	"	"	320	.....	.....	.....	.....	.....
								114 40	1493
									1494
S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼.. D., A. M. Drake, Feb. 2, 1889.	31	"	"	80	25 60	1618	M'ch 30, '86	100 00	302

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
.....	.....	.....	.....	.....	.....	.....	½ 1 97	241	Feb. 12, '90.
Jan. 5, '88									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
					Cert. 269				
Jan. 5, '88									
Feb. 21, '87	18 63	1747	Apr. 16, '88	18 62	270	Dec. 2, '89			
					271				
					272				
					273				
					274				
Jan. 5, '88					275				
Feb. 21, '87	15 07	1747	Apr. 16, '88	53 42	276	Dec. 2, '89			
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87									
Jan. 5, '88									
Feb. 21, '87	65 11	1748	Apr. 16, 1888.						

Ex. 32, *Statement of*

Description.	Sec.	T'p.	R.	Acres.	Tax for 1885.	No. of receipt.	When paid.	Tax for 1886.	No. of receipt.
									1495 1496 1497 1438
S. W. ¼ N. of r't of way..... .... C., Scott M. Ladd, June 4, '87.	33	97	42	15.14	3 27	1620	M'ch 30, '86	2 15 1 62	301
									1495 1496 1497 1438
S. W. ¼ S. of r't of wa- ..... C., G. A. Miller, June 14, '87.	"	"	"	138.76	29 97	"	"	20 11 15 01	301
									1501 1443 1502 1503
S. E. ¼ E. r't of way..... C., Mary Kelly, May 1, '89.	"	"	"	153.87	33 44	"	"	22 45 16 63	301
R't of way across	"	"	"	12.23	2 64	"	"	1 24	301
242									1504 1505 1443 1439
N. E. ¼..... D., Hannah Kennedy, May 18, '87.	35	97	42	160	34 56	1620	M'ch 30, '86	22 57 20 78	301
N. W. ¼..... D., John J. Donohue, May 18, '887.	"	"	"	160	34 56	"	"	20 78	301
									1506 1507 1508 1443
S. W. ¼ E. r't of way..... C., C. A. Bishop, Oct. 18, 1888	"	"	"	154	33 26	.....	"	22 17 20	301
									1509 1439 1510 1511
S. E. ¼ E. of r't of way..... C., Phillip S. Tawner, May 18, '887.	"	"	"	154	33 26	.....	"	22 40 20	301
R't of way across.....	"	"	"	12	2 60	.....	"	1 58	301
243									
N. E. ¼	15	98	38	160	20 56	114	M'ch 29, '86	12 08 10 05	165 216
N. W. ¼.....	"	"	"	160	20 56	114	"	12 08 10 05	165 216
S. W. ¼	"	"	"	160	20 56	114	"	12 08 10 05	165 216
S. E. ¼.....	"	"	"	160	20 56	114	"	12 08 10 05	165 216
E. ½ N. W. ¼.....	17	"	"	80	10 28	114	"	6 04 5 02	165 216
W. ½ N. W. ¼.....	"	"	"	80	10 28	114	"	6 04 5 02	165 216

[Endorsed:] No. 104. Eq. Filed June 12, 1890. A. J. Van Duzee, clerk; J. H. Bolton deputy.

Taxes—Continued.

When paid.	Tax for 1887.	No. of receipt.*	When paid.	Tax for 1888.	No. of receipt.	When paid.	Tax for 1889.	No. of receipt.	When paid.
Jan. 5, '88 Feb. 21, '87	2 93	1747	Apr. 16, '88.						
Jan. 5, '88 Feb. 21, '87	26 84	1747	Apr. 16, '88						
Jan. 5, '88 Feb. 21, '87	36 27	1747	April 16, '88	35 25	1069	M'ch 20, '89			
Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Jan. 5, '88 Feb. 21, '87									
Feb. 28, '87									
Feb. 24, '87 Sept. 26, '87	(*)								
Feb. 24, '87 Sept. 26, '87	20 86	41	M'ch 27, '88	20 73	9	Feb. 6, '89	21 19	5	Feb. 12, '90
Feb. 24, '87 Sept. 26, '87	20 86	41	"	20 73	9	"	Unpaid.		
Feb. 24, '87 Sept. 26, '87	20 86	41	"	20 73	9	"	Unpaid.		
Feb. 24, '87 Sept. 26, '87	10 43	41	"	10 37	9	"	10 70	5	Feb. 12, '90
Feb. 24, '87 Sept. 26, '87	10 43	41	"	(†)10 37	49	M'ch 28, '89	10 56	25	M'ch 20, '90

*Sold and deeded Aug. 15, '87, to John Meisterling.
†Sold and deeded Nov. 30, '88, to J. Gottlieb Schartz.

244 EXHIBIT 33.

This indenture, made the first day of August, in the year one thousand eight hundred and seventy-one, witnesseth:

That whereas the Congress of the United States did, by an act approved March 3, 1857, and by an act approved May 12th, 1864, grant to the State of Minnesota ceertain lands hereinafter described, and did, by an act approved May 12, 1864, grant the certain lands hereinafter described to the State of Iowa, all for the purpose of aiding in the construction of a railroad from St. Paul, in the State of Minnesota, to Sioux City, in the State of Iowa, and which last-named State granted the said lands in Iowa to the Sioux City and St. Paul Railroad Company; and whereas the State of Minnesota did, by various acts of its legislature, grant said lands lying in the State of Minnesota to the said Saint Paul and Sioux City Railroad Company, and by an act approved March 5th, 1869, au*rhtoi*ze the last-named company to transfer such portions of its line of road to be built in Minnesota and such portion of its land grant as it should deem proper to the Sioux City and Saint Paul Railroad Company of Iowa, authorizing said last-named company to construct a portion of said road and to own and hold and control such portion of said ro-d and lands as should be so transferred; and whereas said companies made an agreement dated March 3d, 1871, by which the p*ro*tion of said road lying between Saint James, in Minnesota, and the Iowa State line was to be built and owned by the Sioux City and Saint Paul Railroad Company, and by which all the title and interest in the lands hereinafter described and mortgaged and lying in the State of Minnesota was transferred to and was to become vested in said Sioux City and Saint Paul Railroad Company for building said portion of road so transferred, by virtue of which several laws & acts & by virtue of other laws, acts, and things the Sioux City and Saint Paul Railroad Company is entitled to own, sell, mortgage, and convey the lands hereinafter embraced in this deed of trust and mortgage; and whereas the board of directors of the Sioux City and Saint Paul Railroad Company, for the purpose of providing money to construct said railroads from Saint James to Sioux City aforesaid, determined by resolution to issue bonds to the amount of two millions eight hundred thousand dollars, to bear a semi-annual interest of four per cent., but principal and interest to be payable only from the proceeds of sales of lands so mortgaged, and when all the proceeds of said lands are exhausted the unpaid portion of said bonds or coupons to be utterly void—

245 Said bond to be in form substantially as follows:

No. —. *Land-Grant Mortgage Bond.* $500.

UNITED STATES OF AMERICA, *States of Iowa and Minnesota.*

The Sioux City and Saint Paul Railroad Company.

The holder hereof is entitled to receive the sum of five hundred dollars lawful money of the United States, with interest thereon free

of United States income tax, at the rate of eight per cent. per annum, after the first day of January, one thousand eight hundred and seventy-two, payable on the presentation of the proper interest coupons, in their numerical order, according to the provisions of a deed of trust of certain lands made to Alexander H. Rice and Elais F. Drake, of the date hereof. This bond with others of like tenor and date amounting in all to two millions eight hundred thousand dollars, is based upon said mortgage lands, being about five hundred and fifty thousand acres which the Sioux City and Saint Paul Railroad Company promise to sell and distribute the proceeds according to the terms of said trust deed equally to the holders of all said bonds, and it is distinctly understood and agreed that said company shall not be held liable upon this bond for any amount above the net proceeds delivered from said lands, and when all of said lands shall be disposed of and all moneys arising therefrom distributed to the holders of said bonds, this instrument shawll be void. This bond (with all unpaid coupons attached) will be received at par for the face thereof in payment for any of said mortgaged lands at their current appraised sale value, and this bind shall pass by delivery or by transfer on the books of the company after a registration of ownership certified hereon by the transfer agent of the company. No transfer except on the books of the company shall be void unless the last transfer be to bearer.

In testimony whereof the said Sioux City and Saint Paul Railroad Company has caused this bond to be signed by its president and secretary and its corporate seal to be hereto affixed at Sioux City, Iowa, the first day of August, in the year one thousand eight hundred and seventy-one.

This bond shall be of no validity unless certified by the trustees named therein.

(S'g'd) E. F. DRAKE, *President.*
G. A. HAMILTON, *Secretary.*

(Stamp.)

We certify that this bond is one of a series described and secured as stated herein.

ALEX. H. RICE,
E. F. DRAKE,
Trustees.

Now, for the purpose of securing and providinfg for the payment of the principal and interest of the said two millions eight hundred thousand dollars of bonds to be so issued, the Sioux City and Saint Paul Railroad Company, party of the first part, in consideration of the premises and of one dollar to it in hand paid by Alexander H. Rice, of Boston, Massachusetts, and Elias F. Drake, of Saint Paul, Minnesota, parties of the second part, trustees for all the holders of said bonds, hereby grants, bargains, sells, and conveys to said Alexander H. Rice and Ealias F. Drake, parties of the second part,
246 and to their successors and assigns forever all and singular the following-described lands lying and being in the State of Iowa, reserving and excepting therefrom, however, for the purpose

of a right of way for its railroad fifty feet in width on each side of the center of its track as now built through said lands, and, where said road passes through excavations requiring fences for protection against snow, reserving and excepting a distance not exceeding one hundred feet on each side of the center of the said track; also reserving and excepting not exceeding ten acres at any station, to be set off and to be known as depot grounds; reserving also the right to open and maintain, when required, ditches for drainage over any of said lands, more particularly describing the lands herein conveyed, with the exception and reservation before stated.

All the lands granted by Congress by said act approved May twelfth, 1864, lying and being in the State of Iowa that may hereafter be patented or otherwise transferred by the United States or the State of Iowa to the party of the first part, or to which said first party may acquire title by reason of said grant, supposed to be not less than three hundred and twenty-five thousand acres within the State of Iowa; also all and singular the lands granted by the said act of Congress approved March 3d, 1857, which were transferred or intended to be transferred by the first party by a certain agreement executed and made by the Saint Paul and Sioux City Railroad Company and the first party, dated March 3d, 1871, being so many of the lands granted by the State of Minnesota by sa-d last-named act as shall be found lying within the original six-mile limits of the said grant, from a point twenty miles west from the west side of range number thirty-one, being all the lands of said grant of March 3d, 1857, in place westerly from said beginning point, to be taken according to the mode of adjusting adopted by the State, commencing at the west end of the block of advance sections retained by the Saint Paul and Sioux City Railroad Company, which advance sections lie and extend twenty miles immediately west of said range number thirty-one, and have been conveyed to said last-named company for road by it heretofore constructed, the quantity hereby conveyed being estimated at not less than two hundred and thirty thousand acres, reserving to the first party and excepting from this conveyance lot number five and the southeast quarter of the southeast quarter of section fifteen, township one hundred and four, range thirty-nine, containing eighty-one and fifteen-hundredths ($\frac{15}{100}$) acres; excepting also the right-of-way lands for stations, for fencing against snwo, and for ditches, to the same extent, when required, as provided hereinbefore through and over other lands described as in the State of Iowa, the whole quantity of land herein conveyed being estimated at not less than five hundred and fifty-five thousand acres in both States, hut to include all the lands that may become the property of said first party under and by virtue of said grants of Congres-, subject to the exceptions before named and subject also to the conditions, restrictions, provisions, and limitations provided here-before and following.

Article 1. That whenever the holders of a majority of said bonds shall so determine they may call a meeting of all the said bondholders at the city of New York, at a time and place of which at least sixty days' previous notice stating object of the meeting shall

be given by publication in one or more daily newspapers of general circulation in said city, and at such meeting, if the holders of two-thirds in amount of the bonds outstanding concur, they may organize by choosing a temporary or permanent chairman and secretary, and may resolve to take the control, management, and
247 sale of all the lands embraced herein then undisposed of, and may appoint managers or agents to represent them, who may determine the price at which any of such lands may be sold, the time, manner, and terms of sale, and payments therefor, and do all things relating to the control and management and sale of said lands that the party of the first part could lawfully do had such meeting and organization of bondholders not taken place or managers or agents been appointed.

Article 2. At any meeting provided for as in article first bondholders may for each bond cast one vote in person or by proxy, but all persons claiming to vote as holders of bonds shall at the time and place of voting furnish evidence of ownership or control of bonds by exhibiting in his possession the bonds on which he claim-to vote, or shall file an affidavit of such ownership or possession of said bonds, describing the same particularly by date and number, and the officer before whom such affida-t is made shall certify that said bonds were in the possession of the said party at the date thereof, but registry of bonds shall be sufficient evidence of ownership.

Article 3. That un-il some default in the conditions hereof is made by the parties of the first part or until the bondholders, as provided in the preceding article, shall take the control, sale, and management of said lands, the party of the first part shall hold, control, manage, bargain, and sell any and all of said lands, prescribe the prices for which they shall be sold and the terms of sales and credits, subject, however, to the approval of the said party of the second part or their successors in this trust.

Article 4. Before any contract of sale or deed or other instrument of writing encumbering or conveying title of said lands or any of them shall be valid or binding against the party of the second part, every such contract, deed, or conveyance made by said first party shall be countersigned by said party of the second part as trustees or by their duly authorized attorney acting as such for one or both of them, as the case may be.

Article 5. Whenever any contract or deed of sale shall be approved or countersigned by said trustees the money paid by the purchaser of said lands on account of such contract or deed, or other money received on account of such land, shall be deposited with such party or such trust company, savings or other bank, as the said trustees shall deem safe and most for the interest of said trust. Any and all contracts, notes, or other securities taken by the first party for deferred or other payments on such lands so contracted, sold, or deeded shall, when demanded of the first party, be assigned, transferred, and delivered to said second party, who shall be authorized to hold and control the same, and to deposit and dispose of the collections therefrom in the manner provided herein for other funds received by them.

Article 6. From the funds received from the sale or use of lands and the proceeds and increase thereof the said trustees are authorized, first, to pay all necessary expenses incurred in obtaining patents and title to said lands; second, to pay all public charges and taxes; third, to pay all reasonable expenses incurred by them in the management of this trust or which they may find necessary for the interest of the holders of said bonds. An exhibit in detail of such expenditures shall as often as once a year, or oftener, if required by the first party, be made by said trustees to the party of the first part; and if the holders of said bonds under the provisions hereof shall have taken control of the sale of said lands, then
248 a like exhibit of such expenditures shall be made to the proper representatives of such bondholders, but no payment or allowance for personal services of said trustees shall be made unless first authorized by the first party or by the representatives of the bondholders or a proper court of law or chancery, whichever for the time being shall have control of said lands and the management thereof or the funds arising therefrom.

Article 7. Whenever said trustees shall have in their control funds arising from the sale of lands sufficient to pay at least four per cent. interest on all of said bonds then outstanding they shall give public notice in one or more newspapers of a general circulation in the city of New York of the time and place when they will redeem one or more of the coupons attached to said bonds in their regular order, and the funds for such payment shall be set apart and held specifically for each bondholder until called for by presentation of the proper coupons.

Article 8. If it shall so happen that at the time set apart for payment of any coupons as provided in article seven there shall be in the hands of said second part- funds sufficient to provide for all unpaid coupons when payable by the terms of the bond to which the same is attached, allowing one coupon as payable at the end of each six months from January first, 1872, and in addition thereto the sum of five thousand dollars or more, such express shall be applied to the redemption and extinguishment of outstanding bonds in the manner provided in article ninth following.

Article 9. Whenever the second party shall determine to extinguish bonds as provided in the last article they shall give public notice in one or more commercial newspapers of the city of New York of the time and place where proposals will be received for the redemption of such number of bonds as may be surrendered to them for the amount of money held by them applicable for that purpose, the first publication of such notice to be at least sixty days before the time named for the opening such proposals, and such notice to be published at least five times during each period of thirty days preceding the time named. At the time and place named the second party shall, in the presence of such of the bondholders as may choose to be present, open the tenders or bids and accept to the amount required the bonds offered for the lowest sum, or, if bids from two or more parties are alike, cast lots to determine the bonds to be redeemed. Bids shall name the sum or per cent. that will be accepted

or the face of the bond, which shall include, without taking same into account, all unpaid coupons and interest due to date.

Article 10. The bonds so redeemed, with all coupons, shall be immediately cancelled in the presence of the register of bonds for the time being, and entries of redemption and cancellation shall be furnished by the second party to the first party.

Article 11. As soon as the party of the first part shall be entitled to deeds or patents or other evidence of title from the United States or the State of Minnesota or Iowa — any land shall be deeded or patented a complete descriptive list shall be made and delivered to the party of the second part, and so from time to time until complete lists shall be furnished of all the lands included in the deed of trust.

Article 12. As soon as practicable the party of the first part shall fix a value on each suitable subdivision of land in convenient and appropriate trac-s, for whizh the same shall be sold on such payments and such credits as may be most for the interest -f the holders of said bonds, which appraised value and terms of credit
249 may be changed from time to time, but the apprasials and terms of sale shall not be binding unless approved by the second party or by the agents or managers who may be appointed by the bondholders, as herein provided.

Article 13. For the purpose of enabling the holders of bonds to convert the same into lands, as provided on the face of said bonds, the first party, with the concurrence of the second party, shall make appraisals of said land, when title to the same may be acquired, subject to revision from time to time, and such appraisals shall be known as and be the "current appraised value" of said lands as named in said bonds. Until the true quantity of bonds embraced herein is ascertained such appraisal shall be based on a quantity of five hundred and fifty-five thousand acres, and such appraisal shall be fixed, as near as may be, at prices that will redeem all of said bonds at the face thereof at par and pay all probably expenses and proper charges, and including also an excess of ten per cent. for contingencies, so that there may always remain land *pro rata*, to satisfy and redeem all bonds on terms equally favorable with those that may have been at any previous time surrendered for lands.

Article 14. Bonds shall be received in payment for lands at the "current appraised value," rating such bonds at their face, excluding any allowance for interest ac-rued thereon, but all unpaid coupons belonging to such bonds shall be surrendered with said bonds; but the right to use bonds in payment for lands shall only attach to such of the lands as may at the time be "free lands," which term includes all lands included herein not at the time sold, bargained, or set apart or used for a town site, depots, or other particular purposes or contracted to be sold through any particular agency or in any particular manner, but embracing in the term "free land" all lands or lots forming parts of said originally granted lands held by the first party for general sale at its office.

Article 15. When bonds shall be surrendered in payment for lands they shall be immediately cancelled, with all coupons at-

tached, and reported to the register and to the first party in the manner provided in article 10 hereof.

Article 16. The word trustees when used herein is declared to mean the trustees for the time being, whether those named herein or their successors, and in case any vacancy shall arise from any cause the party of the first part may appoint a successor, but if the holders of said bonds shall have organized and taken control, as provided hereinbefore, then the vacancy shall be filled by the representatives of the bondholders as so organized, and such representatives, after such organization, may remove any trustee and appoint a successor. The trustees may appoint one or more persons or corporation to act as their attorney-in-fact for the purpose of more conveniently performing their duties, or either of said trustees may substitute and appoint an attorney-in-fact to represent him in said duties, and the acts of said trustees or trustee by the properly constituted attorney shall be valid in law and elsewhere. Neither of the trustees shall be liable for the acts or malfeasance of the other or the acts of any other agent or person employed by them in good faith in the course of their duties, and any trustee may resign at pleasure, but he shall, on proper request, execute such papers, if any be necessary, as may be required to invest his successor with full control of the property, moneys, and assets pertaining to the trust.

Article 17. The first and second party hereto, with the concurrence in writing of three-fourths in amount of the holders of all outstanding bonds, may modify and change the provisi-ns
250 hereof in any manner deemed for the equal interest of all holders of bonds, and after a period of ten years from the first day of January, 1872, they may take such measures, by sale of the remaining bonds or otherwise, as they may think best to close the trust and pay all the remaining bonds or distribute *pro rata* among the holders thereof the property or assets remaining, or such other method as they may agree upon which shall be just to all parties to close said trust, and when all of said bonds are redeemed, as provided herein, or, if not all redeemed, when all the lands or proceeds thereof shall be distributed to the bondholders, then the said bonds and the interest coupons or claims attached or thereunto belonging shall be wholly void.

Article 18. If the party of the first part shall at any time fail to well and truly perform all the agreements and undertakings which it has herein covenanted to perform and well and truly act so as to carry into effect the true meaning and intent of this instrument the party of the first part may apply to any competent court of law or equity to enforce the provisions hereof, hereby agreeing that such court shall have full power and authority to make all orders and judgments necessary to enforce and protect the rights of the parties hereto.

Article 19. Whenever the bonds issued under the provisions of this instrument shall all be paid, with the interedt thereon, and the proper expences of the trust, or whenever there shall be in the hands of the second party cash or obligations arising from the sale of said

lands sufficient to pay said bonds and the interest thereon and proper expenses of the trust, then this instrument as to all the remaining unsold lands shall be void, and the remaining lands and any excess of money or obligations, after discharging the liens created by this trust, shall revert and belong to the party of the first part; to have and to hold the said described lands, with all the privileges and appurtenances thereto appertaining, to the said Alexander H. Rice and Elias F. Drake and their successors and assigns forever for the purposes, uses, trusts, and subject to the conditions herein provided.

In testimony whereof the party of the first part, by its president and secretary, have hereunto affixed the seal of said Sioux City and St. Paul Railroad Company and, by order of its board of directors, executed this instrument as the act and deed of the Sioux City and Saint Paul Railroad Company the day and year first above written.

[SEAL.] THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY,
By E. F. DRAKE, *President.*
GEORGE A. HAMILTON,
Assistant Secretary.
ALEXANDER H. RICE,
E. F. DRAKE, *Trustees.*

In presence of witnesses to signatures:
EDW'D SAWYER.
EDWARD BENEAU.
ALEX. H. RICE.
CHAS. S. KENDALL, JR.
GEO. H. MACKAY.

(Endorsed:) No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

251 EXHIBIT No. 34.

Whereas the Sioux City and St. Paul Railroad Company, a corporation authorized and formed under and by the laws of the State of Iowa, is entitled to the benefits of a certain grant of land to aid in the building its said road from Sioux City to the north line of the State of Iowa, as provided by the act of Congress approved May 12th, 1864, which grant of lands to the State of Iowa in trust was accepted by said State, and all the lands, rights, powers, and privileges conferred on the State in and by said act were granted to and conferred upon the said Sioux City and St. Paul Railroad Company by the General Assembly of the State of Iowa by an act approved April 3, 1866, and the benefits of said last-named act were duly accepted by said Sioux City and St. Paul Railroad Company, and said company, prior to the fourth day of October, 1866, completed the definite location of its road from Sioux City to the north line of the State of Iowa and duly filed a map of said location with the governor of said State and in the General Land Office of the United States, which said map so filed was approved and duly recognized

as a legal map of the definite location of said road, and the odd sections of lands belonging to the United States within — (20) miles on each side of said location were set apart and selected by the Secretary of the Interior as inuring to said grant for said road; and

Whereas, prior to July 15, 1872, said railroad company had constructed and completed as required by law its said railroad from Sioux City to the north line of said State of Iowa, a distance of eighty and six-tenths miles (with the exception of twenty-four miles between the village of Le Mars and said Sioux City), making fifty-six and six-tenths miles of completed road, and such completion was duly certified to the governor of the State and to the Secretary of the Interior of the United States, and after filing such certificates of completion the Secretary of the Interior caused to be patented to the State of Iowa for the use and benefit of the Sioux City and St. Paul Railroad Company all of the lands inuring to said grant, and after the issuing of said patents the General Assembly of the State of Iowa, by an act approved April 13, 1874, authorized and directed the governor of the State to certify to the Sioux City and St. Paul Railroad Company any and all lands held by the State for the benefit of said company, thereby vesting in said company a legal and equitable title in said lands; and

Whereas, in order to raise money to construct said road, said company did by mortgage or deed of trust, made on the first day of August, 1871, convey to Elias F. Drake and Alexander H. Rice, as trustees, and their successors in said trust, to secure, pay, and retire certain bonds of the denomination of five hundred dollars each; and

Whereas said bonds were sold and paid for in money which was used to construct said road (a large amount of said bonds, with interest accrued thereon, being still outstanding and unpaid, and said trust remaining in full force); and

Whereas Elias F. Drake and Amherst H. Wilder, at present the trustees for said trust, pursuant to the provisions of the eleventh article of said trust deed, dated August first, A. D. 1871, have requested and required the Sioux City and St. Paul Railroad Company to file a descriptive list of lands, particularly of such lands as have been patented to the State of Iowa for the use of said railroad company, and also to execute an instrument by way
252 of further assurance and confirmation of said deed of trust of August 1, 1871, embracing and describing the specific lands conveyed and intended to be conveyed in and by its said original trust deed, as therein and thereby contemplated and provided;

And whereas the board of directors of said Sioux City and St. Paul Railroad Company has duly adopted a resolution to comply with said demand of said trustees and authorizing said company by its proper officers to execute said instrument:

Now, therefore, know all men by these presents that, in consideration of the payment in hand to the Sioux City and St. Paul Railroad Company of one dollar by Ellias F. Drake and Amherst H. Wilder, trustees, acting by authority of said deed of August first aforesaid and in pursuance of said resolution of the board of directors

of the Sioux City and St. Paul Railroad Company heretofore adopted, the Sioux City and St. Paul Railroad Company, party of the first part, hereby grants, sells, conveys, and confirms to Elias F. Drake and Amherst H. Wilder, as trustees as aforesaid, and their successors in said trust, all and singular the lands heretofore patented to the State of Iowa under the act of Congress of May 12th, 1864, for the use and benefit of the Sioux City and St. Paul Railroad Company, and particularly all that portion of said lands embraced in the following descriptive list, to wit, land lying and being in the county of O'Brien, in said State of Iowa, being —:

To have and to hold the said lands and every part thereof to the said Elias F. Drake and Amherst H. Wilder, in trust, nevertheless, subject to all the conditions, benefits, and provisions of said deed of trust or mortgage hereinbefore referred to executed by said railroad company to said Elias F. Drake and Alexander H. Rice, trustees, dated the first day of August, A. D. 1871, and duly recorded in the several counties where said lands — situate, hereby ratifying and confirming, approving, continuing, and making in full force all and singular the provisions of said deed of trust of August 1st, A. D. 1871, to said Elias F. Drake and Amherst H. Wilder, trustees aforesaid, for the benefit and security of the holders of bonds outstanding issued under said deed, subject to all the provisions thereof, reference being had to said deed for particulars of the provisions, grants, and powers therein and hereby granted and confirmed in each and every part thereof.

In testimony whereof the said Sioux City and St. Paul Railroad Company has hereto affixed its corporate seal and caused these presents to be signed by its president and attested by its secretary this twenty-fifth day of February, A. D. 1884.

ELIAS F. DRAKE,
President Sioux City & Saint Paul Railroad Company.

Signed, sealed, & delivered in presence of—
J. E. MOORE.
W. F. VON DEYN.

[Corporate Seal Sioux City — Saint Paul Railroad Company.]

Attest: GEO. A. HAMILTON,
Sec. S. C. & St. P. R. R. Co.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it remembered that on this twenty-fifth day of February, A. D. 1884, before me, the undersigned, a notary public in and
253 for said county, personally came Elias F. Drake, to me personally known to be the president of the Sioux City and St. Paul Railroad Company, the grantor herein named, and acknowledged said instrument to be the act and deed of the said company, by the several officers whose names are subscribed to said instrument thereunto appointed, voluntarily done and executed.

In testimony whereof I have hereunto affixed my hand and notarial seal, at St. Paul, Minnesota, the day and year last above written.

[Notarial Seal, Ramsey Co., Minn.]

O. D. WHEELER,
Notary Public, Ramsey Co., Minn.

(Endorsed:) State of Iowa, O'Brien county. Filed for record this 5th day of March, A. D. 1884, at 10 o'clock a. m., and recorded in Book R of Deeds, on page 246 to 251, of O'Brien county records. W. H. Noyes, recorder. State of Iowa, O'Brien county. Entered for taxation this 5th day of March, 1884. T. J. Alexander, county auditor. Trust deed. Sioux City and St. Paul R. R. Company to Elias F. Drake and Amherst H. Wilder, trustees. State of Iowa, Dickinson county. Filed for record February 28th, 1884, at 10 o'clock a. m., and recorded in Book "E" of Mortgages, page 524. I., R. & C. No. 62. C. C. Perrin, recorder. No. 104. Equity. Filed June 12th, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

EXHIBIT 35.

O'Brien County Lands.

Description.	Section.	Township.	Range.
N e ¼	1	95	42
N w ¼	1	95	42
S w ¼	1	95	42
S e ¼	1	95	42
N e ¼	5	95	42
S w ¼	5	95	42
S e ¼	5	95	42
E ½ of e ½	7	95	42
E ½ of n e ¼	19	95	42
N w ¼	9	95	42
S w ¼	9	95	42
S e ¼	11	95	42
N e ¼	15	95	42
N w ¼	15	95	42
S w ¼	15	95	42
S e ¼	15	95	42
N w ¼	21	95	42
S w ¼	21	95	42
N e ¼	17	95	42
S w ¼	17	95	42
S e ¼	17	95	42
N e ¼	23	95	42
254 N w ¼	23	95	42

Exhibit 35—Continued.

Description.	Section.	Township.	Range.
S w ¼	23	95	42
S e ¼	23	95	42
S w ¼	29	95	42
N w ¼	5	95	42
S w ¼	5	95	41
N e ¼	7	95	41
N w ¼	7	95	41
S w ¼	7	95	41
S e ¼	7	95	41
S w ¼	19	95	41
N w ¼	19	95	41
S ½ of n ½	11	95	41
S w ¼	11	95	41
S e ¼	11	95	41
N e ¼	13	95	41
N w ¼	13	95	41
S w ¼	13	95	41
S e ¼	13	95	41
N e ¼	23	95	41
N w ¼	23	95	41
S e ¼	23	95	41
N e ¼	25	95	41
N w ¼	25	95	41
S w ¼	25	95	41
S e ¼	25	95	41
N e ¼	27	95	41
S w ¼	27	95	41
S e ¼	27	95	41
N e ¼	15	95	41
N w ¼	15	95	41
S w ¼	15	95	41
S w ¼	3	96	42
S e ¼	5	96	42
N e ¼	15	96	42
N w ¼	15	96	42
S e ¼	15	96	42
N w ¼	17	96	42
N w ¼	29	96	42
N e ¼	33	96	42
N w ¼	33	96	42
S w ¼	33	96	42
N e ¼	29	96	42
S w ¼	29	96	42
S e ¼ s e ¼, n e ¼ n e ¼	31	97	42

Exhibit 35—Continued.

Description.	Section.	Township.	Range.
S e ¼	33	97	42
E ½	25	97	42
N w ¼	7	97	42
S e ¼	9	97	42
E ½ sw ¼	35	97	41

Dickinson County Land.

Description.	Section.	Township.	Range.
N w ¼	17	98	38
N w ¼	15	98	38
S e ¼	15	98	38
S w ¼	15	98	38

(Endorsed:) No. 104. Equity. A. J. Van Duzee, clerk. J. H. Bolton, deputy. Filed June 12, 1890.

255 And afterwards, to wit, on the 7th day of October, A. D. 1890, the same being the 1st day of the regular October term, A. D. 1890, of said court, the following proceedings were had by said court in said cause and duly recorded among the proceedings of said court, to wit:

THE UNITED STATES OF AMERICA
vs.
THE SIOUX CITY & ST. PAUL R. R. COMPANY, ELIAS F. DRAKE and AMHERST H. WILDER. } No. 104. Equity.

And now, at this time, to wit, Oct. 7th, 1890, it being the time heretofore fixed under the rules of this court for the trial of this cause, the same coming on for trial, the complainant appears by M. D. O'Connell, U. S. attorney, E. C. Hughes, and Wm. L. Joy, and the defendant appear- by J. H. & C. M. Swan, and thereupon the trial of this cause is commenced and the evidence of the parties is introduced and the cause is fully submitted to the court; and the court, having heard the arguments of counsel and being fully advised in the premises, takes the same under advisement.

And afterwards, to wit, on the 20th day of October, A. D. 1890, the same being the 8th day of the said October term, A. D. 1890, further proceedings were had by said court in said cause and recorded as follows, to wit:

THE UNITED STATES OF AMERICA
vs.
THE SIOUX CITY & ST. PAUL R. R. COMPANY, ELIAS F. DRAKE, and AMHERST H. WILDER. } No. 104. Equity.

And now, on this 20th day of October, A. D. 1890, this cause having been heretofore, to wit, Oct. 7th, 1890, at this term of court duly tried, argued, and submitted to the court and taken under advisement, and the court, having duly considered same and being now fully advised in the premises, submits and files its opinion therein, directing that counsel agree upon and submit to the court a final decree for its signature; and thereupon, counsel failing to agree upon the terms of the decree to be entered in this caus-, the same is continued until Dec. 18th, 1890, for the further hearing and settling decree.

Next entry is with reference to C., M. & St. P. R. R. Co. filing pet. of intervention. Next entry is with reference to order as to service of subp., etc., by C., M. & St. P. R. R. Co.

And upon said 20th day of October, A. D. 1890, there was filed in the office of the clerk of said court the opinion of the court, Shiras, judge, in said cause; which opinion is in the words and
256 figures following, to wit:

In the United States Circuit Court in and for Northern District of Iowa, Western Division, October Term, A. D. 1890.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY & ST. PAUL RAILROAD COMPANY *et al.*, Defendants. } Equity. Bill for Adjustment of Land Grant.

W. H. H. Miller, Attorney General; E. C. Hughes, W. L. Joy, for complainant; J. H. and C. M. Swan, for defendants.

SHIRAS, *Judge:*

The Congress of the United States, by an act approved May 12th, 1864, granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City to the south line of the State of Minnesota, to such point on said line as the State of Iowa might select, between the Big Sioux and the west fork of the Des Moines river-, and also a line of railroad from South McGregor, in said State, running westerly on or near the forty-third parallel of north latitude, to a point of intersection with the first-mentioned line in the county of O'Brien, every alternate section of land, designated by odd numbers, for ten sections in width on each side of said roads not sold, pre-empted, or otherwise disposed of by the United States, it being further provided that for every section or part

thereof sold or disposed of by the United States within the ten-section limits the Secretary of the Interior should select in lieu thereof from the public lands of the United States nearest to the tiers of sections first described and within twenty miles of the located line of railroad and included in the alternate odd-numbered sections or parts thereof such quantity as should be equal to the lands sold, reserved, or otherwise appropriated by the United States within the ten-section limits. The State of Iowa, by an act of its General Assembly, accepted the grant thus made, and designated the Sioux City and St. Paul Railroad Company as the beneficiary of the grant so far as the same provided for the building of a road from Sioux City to the Minnesota State line.

That company accepted the grant, and on the 27th day of September, 1866, commenced the location of its line from Sioux City, completing the survey thereof to the Minnesota State line by October 1st, 1866, and on the 2nd day of April, 1867, it caused to be filed in the office of the secretary of state of the State of Iowa a duly certified map of such location, and on the 10th day of July, 1867, this map, with the certificates of the governor and secretary of the State of Iowa, was filed in the office of the Secretary of the Interior, at Washington.

On the 26th day of August, 1867, the Commissioner of the General Land Office of the United States transmitted to the local land office at Sioux City a map showing the location of said line of railway, together with the ten and twenty mile limits marked thereon,
with an official letter withdrawing the lands numbered by
257 odd sections from entry or sale and increasing the price of the even-numbered sections to $2.50 per acre.

In the year 1869 the railway company made and filed in the land office at Sioux City selections of all the lands undisposed of in the odd-numbered sections within the ten and twenty mile limits, which selections amounted to 407,870.21 acres.

In the year 1872 the company commenced the construction of the line of railway, beginning at the Minnesota State line and progressing southwardly until the line reached the town of Le Mars, in Plymouth county.

In the months of July and August, 1872, and November, 1873, the governor of Iowa filed with the Secretary of the Interior certificates showing the construction of five sections of ten miles each of said railroad, and on the 11th day of October, 1872, and the 25th day of January, 1875, the Secretary of the Interior caused patents to issue to the State of Iowa for all the lands selected within the place and indemnity limits of said grant, covering 407,870.21 acres.

The governor of Iowa, on behalf of the State, executed deeds to the railway company for 322,412.81 acres of these lands.

In 1879 a suit in equity was brought in the United States circuit court for the district of Iowa on behalf of the Chicago, Milwaukee and St. Paul Railway Company, as the successor of the McGregor and Western Railroad Company, which had become entitled to the lands granted for the building of the line from McGregor to the point of intersection with the Sioux City line, against the Sioux

City and St. Paul Company for the purpose of settling the rights of the respective companies to the lands embraced within the overlapping limits of the two grants when the line of railway approached each other.

The Supreme Court of the United States held that the grant must be construed to be within the overlapping limits, a grant in common, and that each company was entitled to one-half the lands; that the lands within the ten-miles limits of each road were to be equally divided, as well as the indemnity lands outside the ten but within the twenty miles limits of both roads, but that neither company in placing indemnity lands could invade the ten-mile limits of the other company.

Sioux City Railroad *vs.* C., M. & St. P. R'y Co., 117 U. S., p. 406.

Based upon this ruling a decree in partition was entered in the case, which had the effect of conveying to the C., M. & St. Paul Company 41,687.52 acres of the land which had been previously deeded by the State of Iowa to the Sioux City and Saint Paul Company.

Deducting these, there remained of the lands deeded to the defendant company 280,725.29 acres, which it has sold or disposed of and the title to which is not questioned.

Of the 407,870.21 acres of selected lands conveyed to the State of Iowa in trust under the provisions of said grant there remains undisposed of 800 acres in Dickinson county and 21,179.85 acres in O'Brien county, which the State of Iowa refused to convey to the railway company, claiming that the same nor no part thereof has ever been earned by the defendant company. The time limited in the act of Congress of May 12th, 1864, within which the State of Iowa was to cause the building of the line of railway named in the act has long since passed by and no further rights to the lands under that grant can be hereafter acquired by any action on — part of the State or the railway company.

The bill in the present cause was filed under the provisions of the act of Congress of March, 1887, providing for the adjustment of said grants in aid of the construction of railways and the
258 forfeiture of unearned lands, and the issues presented require a construction of the grant in question in order to determine the lands to which the defendant company has become entitled. Counsel for the respective parties have very fully and ably discussed the questions involved and have submitted to the court well-digested briefs of the points and the authorities relied upon. I shall not attempt to touch upon all the points and authorities thus presented, but shall confine myself to the statement of the conclusions reached upon the few general points which, as I conceive it, must control the rights of the parties.

In construing grants of the nature of the one now in question the object sought to be accomplished must be well borne in mind, for this is what the subsidiary provisions of the law are intended to accomplish. As is said by the Supreme Court in Winona & St.

Peter R. R. Co. *vs.* Barney, 113 U. S., 618, these land grants are to receive such a construction as will carry out the intent of Congress, however difficult it might be, to give full effect to the language used if the grants were by instruments of private conveyance. To ascertain that intent we must look to the condition of the country when the acts were passed, as well as to the purpose declared on their face, and read all parts of them together.

Can there by any doubt of the purpose which Congress had in view when it passed the act making the grant in question? Was not such purpose to secure the construction of a line of railway from Sioux City to the Minnesota State line? This is the purpose declared upon the face of the act, as well as the one which all the other circumstances clearly indicate.

To accomplish this purpose Congress was willing to grant all the public lands not otherwise disposed of found within the alternate sections designated by odd numbers within ten miles of the located line of railway, with the right to select from within a limit of twenty miles from the odd-numbered sections such quantity, if the same could be found not otherwise disposed of, as should equal the number of acres falling within the ten-mile limits excepted from the grant by reason of having been sold or otherwise disposed of by the United States. There is no guaranty by the United States that the quantity of land covered by the grant should equal any fixed number of acres either for the construction of the entire road or any portion thereof. The extent of the grant and the limitations thereto are fixed by the terms of the act, but there is no attempt to state the number of acres that the grant would in fact cover, and the exceptions named in the act clearly show that it was expected that the company undertaking the construction of the line of proposed railway must be content with whatever quantity of land it was ultimately found was covered by the grant and in fact conveyed by it.

This quantity of lands, whatever the number of acres, the United States granted for the purpose of securing the building of a line of railway from Sioux City to the Minnesota State line, and the defendant company when it accepted the grant undertook to build that line and not merely a part of it. To entitle the company to the entire quantity of lands covered by the grant, whether more or less, it was required to build the entire line of road named.

Part performance on its part would not entitle it to demand entire performance on part of the United States.

The company, having failed to build the entire line, could not equitably demand payment of more than the number of miles actually constructed, and this much the United States is willing to concede the company may demand.

259 The fact that in the third paragraph of the act of Congress it is provided that upon the completion of each section of ten miles the Secretary of the Interior should issue to the State of Iowa patents for one hundred sections of land for the benefit of the company cannot, when read in connection with the other sections of the act, be construed to mean that by the building of ten miles the company absolutely earned the hundred sections.

The work contracted to be done was an entirety, to wit, the line from Sioux City to the southern boundary of Minnesota, and the compensation to be paid by the United States was the total number of acres of land covered by the grant and the provisions of paragraph 3 only fix the time for partial payments to be made, and are not intended to change the clear meaning of the granting clause of the act.

It must therefore be held that the company is entitled to such portion of the lands actually covered by the grant as the number of miles of road actually constructed bears to the total length of the located line from Sioux City to the southern boundary of Minnesota.

On behalf of the United States it is claimed that the company is limited in its selections for each ten-mile section of completed road to the lands found within the ten and twenty section limits of each completed section.

Whatever might be the limitation when selecting the lands, as each ten miles was completed, I do not think any such restriction is applicable upon a final settlement of the rights of the parties.

As I construe the grant Congress agreed to give, in consideration of the building the entire line of road, a quantity of land equal to the amount of the alternate sections within a limit of ten sections on each side of the located line throughout its entire length, provided such quantity could be found within the twenty-mile limit. The grant is not so many acres for each mile or each section of ten miles, but so much for the entire line. If the contention of the United States in this particular is correct it would follow that if the company had built the line from Sioux City to Le Mars only it could get nothing, as in effect there were no lands coterminous to that part of the line on which the grant could act. If the building of the line from Sioux City to Le Mars would not have earned any of the grant for the reason stated, then the building thereof from Le Mars to the Minnesota line would earn all that the grant covers, and this is what is claimed by the company and is resisted by the United States when applied to the actual state of the case, which is that the company, finding that the grant would not cover the lands over the entire length of proposed road, built the road southwardly from the Minnesota line, going no farther than the town of Le Mars.

The conclusion reached on this point is that the right of selection extends over the entire length of the proposed road, and is not limited to the tiers of sections coterminous to the line of railway actually built.

This view practically disposes of the next point at issue between the parties, which is whether the defendant company can make claim to indemnity for the moiety of lands which passed to the C., M. & St. P. R'y Company under the decision of the Supreme Court in the case already cited from 117 U. S.

On behalf of the United States it is argued that as the two grants were made in the one act it must have been the intent to limit each company to the moiety thereof, and that by mere construction the

grant should not be extended beyond the fair import of its language. The terms of the grant, however, are explicit and
260 embrace every alternate section along the entire length of the road within the ten-section limit, with the proviso that if upon the definite location of the line it was found that the United States had sold or permitted pre-emption or homestead right to attach to any of these alternate sections, or that the same had been reserved by the United States for any purpose whatever, then indemnity lands should be selected in lieu thereof within the twenty-mile limit. Upon the location of defendant's line it was found that a moiety of the alternate sections within certain limits had been reserved by the United States for the purpose of aiding in the construction of another line of railway, and hence to replace these lands the defendant company could resort to the lands within the limits of the grant lying outside of those passing to the C., M. & St. P. R'y Company.

If the grant to the McGregor line had been made by another act of Congress it could not be claimed that it did not reserve lands within the meaning of the exception found in the present act so as to entitle the defendant company to claim indemnity therefor, and the mere fact that the two grants are found in one act of Congress instead of in two does not change the result in this particular. I hold, therefor-, that the grant is not limited to one-half of the alternate sections found within the overlapping limits of the two grants, and that the defendant company is entitled to make claim for the proper portion of the lands that were reserved for the McGregor road and which passed to the C., M. & St. P. R'y Company.

As already stated, in the year 1857 the Commissioner of the General Land Office transmitted to the local land office at Sioux City an official map showing the located line of the railway and the ten and twenty mile limits therefrom.

In 1887 a succeeding Commissioner of the General Land Office prepared another map, which to some extent changes these limits, and the question is mooted which should be followed in adjusting the rights of the parties. It may be true, as claimed, that the latter map is the more accurately drawn, but it is not being claimed that the original map is in any way affected by fraud or serious mistake. I think it should govern in ascertaining the rights of the parties. It was made at the time it became necessary to define the limits in question. It presents or represents the view of the land department at that time and must be held to have governed and controlled the local land office and all third parties since its execution.

It is impossible to now know how many titles and rights are based thereon, and it is always unwise to discredit without good reason documents which have been accepted and acted upon by the community at large.

As an original proposition, under the express terms of the act in selecting indemnity lands within the twenty-mile limits, it was the duty of the Secretary of the Interior to make the selections from the tiers of sections nearest to the place limits; but if by any means other selections were in fact made and patented to the State and by

the State to the defendant company, that fact cannot be availed of by the defendant as a defence to the present bill for a proper and equitable adjustment of the rights of the parties.

The defendant has no right to any of these lands except as they may have been earned under the terms of the grant, and it cannot be heard to say that any of them were wrongly selected so long as it claims them under the grant.

The act of Congress of March 3, 1887, on which this suit is based makes it the duty of the department and of the courts
261 dealing with this matter of the adjustment of these land grants to carefully protect the rights and equities of actual settlers.

Hence the rule should be followed that in making such adjustment, so far as it may be possible to do so, actual settlers shall not be deprived of their farms or homes, even if to do so it may require the apportionment to the company of a section or other quantity of land within the indemnity limit which would not fall within the nearest tiers of sections.

I have thus indicated the conclusions I have reached upon the general proposition discussed by counsel, but have not attempted to deal with the question of details.

If, in the application of these rules to the special facts, counsel cannot agree as to the results, such difference must be hereafter presented, but I trust the foregoing opinion is sufficiently explicit as to enable counsel to frame a proper decree thereunder.

(Endorsed:) Filed October 20th, 1890. A. J. Van Duzee, clerk.

And afterwards, to wit, on the 18th day of December, A. D. 1890, the same being of the October term, 1890, aforesaid court, further proceedings were had by said court in said cause and decree entered as follows, to wit:

THE UNITED STATES OF AMERICA
vs.
THE SIOUX CITY & ST. PAUL R. R. CO., ELIAS F. DRAKE, & AMHERST H. WILDER. } Decree.

This cause having been heretofore fully argued by counsel, and having been, on the 8th day of October, 1890, finally submitted to the court upon the pleadings and proofs and taken under advisement, and now, on this 18th day of December, 1890, said day being of the October term of said court, being fully advised in the premises, it is by the court ordered, adjudged, and decreed that the title to the lands hereinafter described, to wit:

Dickinson County.

Description.	Section.	Township.	Range.	Acres.
All	15	98	38	640.00
N w ¼	17	98	38	160.00
				800.00

O'Brien County.

Description.	Section.	Township.	Range.	Acres.
S ½ of n w ¼ & s w ¼	9	95	40	240.00
S w ¼ of n w ¼	7	95	40	36.50
W ½	5	95	41	318.64
All	7	95	41	602.00
S e ¼ and s w ¼ and s ½ of n ½	11	95	41	480.60
All	13	95	41	640.00

262 *Dickinson County.*

Description.	Section.	Township.	Range.	Acres.
All	15	95	41	640.00
W ½	19	95	41	640.00
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
N e ¼ of n w ¼	3	96	41	39.94
S e ¼ of n e ¼	15	96	41	40.00
S w ¼ of s w ¼	13	97	41	40.00
E ½ of s w ¼ & n e ¼ of s e ¼	35	97	41	120.00
All	1	95	42	641.36
N ½ s w ¼, n ½ of s e ¼, & se ¼ of s e ¼	5	95	42	590.82
S e ¼ n w ¼, w ½ & s e ¼ & n w ¼	7	95	42	390.41
All	9	95	42	640.00
S ½ n e ¼, s ½ n w ¼, & s ½	11	95	42	560.00
All	15	95	42	640.00
All	17	95	42	640.00

Dickinson County—Continued.

Description.	Section.	Township.	Range.	Acres.
E½ n e ¼, w ½ s w ¼, s e ¼ s w ¼, & s e ¼	19	95	42	353.49
All	21	95	42	640.00
All	23	95	42	640.00
All	27	95	42	640.00
S ½	29	95	42	320.00
E ½ n e ¼ & s e ¼ n w ¼	31	95	42	120.00
All	3	96	42	646.16
S ½	5	96	42	320.00
N w ¼ n e ¼ & e ½ s e ¼	7	96	42	120.00
All	11	96	42	640.00
All	15	96	42	640.00
W ½	17	96	42	320.00
S w ¼ n e ¼, s e ¼ n w ¼, n w ¼ n w ¼	19	96	42	116.17
All	23	96	42	640.00
All	29	96	42	640.00
E ½ s e ¼	31	96	42	80
All	33	96	42	640
All	3	97	42	595.60
S w ¼ n e ¼, n e ¼ n w ¼, & n w ¼ s e ¼	7	97	42	120.00
All	9	97	42	640.00
All	17	97	42	640.00
E ½ n e ¼ & e ½ s e ¼	19	97	42	160.00
All	25	97	42	640.00
S ½	29	97	42	320.00
S e ¼ of n e ¼ & n e ¼ s e ¼	31	97	42	80.00
S ½	33	97	42	320.00
All	35	97	42	640.00
				21,179.85

be, and the same is hereby, established and quieted in the complainant, The United States of America, as against the adverse claims of the defendants, The Sioux City and St. Paul R. R. Co.; Elias F. Drake and Amherst H. Wilder, trustees in the mortgages in the pleadings described; and it is further ordered, adjudged, and decreed that the said defendants and each of them be, and they are each hereby, forever barred and stopped from asserting any right, title, lien, or claim to the said lands herein described or any part or portion thereof adverse to the title of the complainant herein, The United States of America.

It is further ordered and adjudged that the claim and demand set up herein on behalf of The United States of America, complainant, to recover the value in money against The said Sioux City &

St. Paul R. R. Co. of the lands received by said company in excess of the total amount earned by it under said grant is hereby dismissed without prejudice to the right of complainant to sue and recover the same in any other proper proceeding.

263 It is further ordered, adjudged, and decreed that complainant have and recover of the said defendant-, the Sioux City & St. Paul R. R. Co., Elias F. Drake, and Amherst H. Wilder, the costs of this proceeding, taxed at forty-three & $\frac{1}{100}$ ($43.01) dollars, and have due process therefor.

To all of which decree and each and every part thereof the said defendants and each of them duly excepted; and thereupon in open court said defendants prayed an appeal herefrom to the Supreme Court of the United States, which said appeal was duly allowed by the court, the said appellants to give bond with surities in the sum of one thousand dollars in due form and properly conditioned.

And it was thereupon duly agreed and stipulated in open court and by and between said complainant and said defendants that the maps used in evidence upon the hearing of this cause be made a part of the transcript herein without being copied, and that the same be certified up by the clerk as part of the record in this cause.

And thereupon, it appearing that the Chicago, Milwaukee & St. Paul Railway Company, the intervenor herein, had filed its cross-bill herein asserting its claim to parts of the realty hereinbefore described, but that no issue had yet been taken therein, it was thereupon ordered that for the purpose of said cross-bill and the rights defendant thereon this cause be continued until Friday, February 6th, 1891, at 10 a. m.

(Endorsed:) Filed Dec. 18th, 1890. A. J. Van Duzee, clerk.

And on the 10th day of January, A. D. 1891, there was filed in the office of the clerk of said court a supersedeas bond in said cause; which bond is in the words and figures following, to wit:

Supersedeas Bond.

Know all men by these presents that we, the Sioux City & St. Paul Railroad Company, as principal, and Elias F. Drake, Amherst H. Wilder, and ——— ———, as security, are held and firmly bound unto the United States of America in the full and just sum of one thousand ($1,000.00) dollars, to be paid unto the said The United States of America, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

As witness our hands this 26th day of December, A. D. 1890.

Whereas lately, at a term of the circuit court of the United States in and for the northern district of Iowa, western division, in a suit depending in said court between said United States of America, as complainant, and said Sioux City & St. Paul Railroad Company, as defendants, a judgment & decree was rendered against the said

Sioux City & St. Paul Railroad Company, and they, the said Sioux City & St. Paul Railroad Company, having duly obtained in open court and entered of record therein an appeal from said judgment and decree to the Supreme Court of the United States, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Sioux City and St. Paul Railroad Company shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE SIOUX CITY & ST. PAUL R. R. CO.,
By E. F. DRAKE, *Pt.*
264 ELIAS F. DRAKE.
AMHERST H. WILDER.
H. D. BOOGE, JR.

UNITED STATES OF AMERICA, } ss:
State of Minnesota, County of Ramsey, and City of St. Paul, }

Elias F. Drake and Amherst H. Wilder, the undersigned, being duly sworn, each deposes and says that he is a surety on the foregoing bond, is a resident of the State of Minnesota, is worth the sum of two thousand dollars beyond the amount of his debts, and has property liable to execution in the State of Iowa equal to the sum of one thousand dollars.

ELIAS F. DRAKE.
AMHERST H. WILDER.

Subscribed and sworn to before me this 30th day of December, A. D. 1890.

W. H. PETERSON,
Notary Public, Ramsey County, Minn.

STATE OF IOWA, } ss:
County of Woodbury, }

H. D. Booge, Jr., the undersigned, being duly sworn, deposes and says that he is a surety on the foregoing bond, is a resident of the State of Iowa, is worth the sum of two thousand dollars beyond the amount of his debts, and has property liable to execution in the State of Iowa equal to the sum of one thousand dollars.

H. D. BOOGE, JR.

Subscribed and sworn to before me this 3 day of Jan., 1891.
[SEAL.] CHAS. M. SWAN,
Notary Public, of Iowa, Woodbury County.

(Endorsed:) No. 104. Equity. United States of America *vs.* Sioux City & St. Paul R. R. Co. Supersedeas bond. Approved this 10th day of January, A. D. 1891. O. P. Shiras, judge. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

265 THE UNITED STATES OF AMERICA, *Northern District of Iowa,* } ss:

I, A. J. Van Duzee, clerk of the United States circuit court in and for the northern district of Iowa, do hereby certify that the foregoing transcript, together with exhibits, contains full, true, and complete copies (except Exhibits Nos. 8, 9, 22, & 23, which accompany this transcript as originally filed, the said court so ordering) of the record and proceedings in the case of The United States of America, complainant, against The Sioux City and St. Paul Railroad Company, Elias F. Drake, and Amherst H. Wilder, defendants, No. 104, equity, as full, true, and complete as the originals of the same (except Exhibits Nos. 8, 9, 22, & 23, accompanying this transcript as originals) now remain on file and of record in my office, and including the opinion of the court—Shiras, judge—in said cause.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Sioux City, in said district of Iowa, this 2nd day of April, A. D. 1891.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE,
Clerk of U. S. Circuit Court, Northern District of Iowa,
By J. H. BOLTON, *Dep'ty.*

266 United States Circuit Court, Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
SIOUX CITY & ST. PAUL R. R. Co. *et al.*, Defendant-. } No. 104. Equity.

Judgment rendered 18th day of December, 1890, *vs.* def'ts (for certain lands, &-.) for $190.21 costs.

Clerk's Statement of Costs.

Clerk U. S. circuit court	13	05
Attorney, docket fee, E. C. Hughes	20	
" on depositions		
Marshal " eq. subpœna, p'd by E. C. Hughes for comp't	7	06
Marshal on summons		
" " writ of attachment		
" " subpœna for witnesses		
Witnesses, plaintiffs		
" defendants		
Commissioners taking depositions		

Clerk State court —— county	
Cl'k U. S. C. court—trans., 145.50; 2 ctfs., 70; bond, 1.00; adv. costs, 2.90	150 10
	$190 21

Attest: A. J. VAN DUZEE, *Clerk.*

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

Att'y gen'l & E. C. Hughes, plaintiff's att'y; J. H. & C. M. Swan, of Sioux City, Iowa, defendants' att'y.

Endorsed on cover: Case No. 14,620. N. Iowa C. C. U. S. No. 1148. The Sioux City & St. Paul Railroad Company, appellant, *vs.* The United States. Filed May 4, 1891.

October Term, [illegible]

The Sioux City and St. Paul Railroad Company, appellant,
vs.
The United States.

MOTION TO ADVANCE

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, appellant,
vs.
THE UNITED STATES.
No. 1148.

MOTION TO ADVANCE.

And now, March 21, 1892, comes the Attorney-General and moves the court to advance the above-entitled case for an early hearing at the October term, 1892. The case involves directly the title to 22,000 acres of land claimed by the appellant under a railroad grant, and indirectly the titles of 26,000 acres of land more. The lands are in the possession of settlers upon them, and the unsettled condition of the titles is a constant source of annoyance to the parties interested and a great injury to the community.

I append correspondence on the subject with counsel on the other side.

W. H. H. MILLER,
Attorney-General.

20438

SIOUX CITY, IOWA, *February* 20, 1892.

IN RE THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, appellant, *vs.* THE UNITED STATES.	—Term, No. 1148. Appeal from circuit court, northern district of Iowa.

HON. ATTORNEY-GENERAL UNITED STATES,
Washington, D. C.:

SIR: The above cause is pending on appeal in the Supreme Court at Washington. The record is now printed and could be argued and submitted immediately if the cause can be advanced upon the calendar of that court. The appellants desire to be heard orally, when submitted.

The cause is one which should be disposed of as soon as possible for the best interest of all parties interested. It involves directly the title of 22,000 acres of land claimed by the appellant under a railroad grant, and the questions involved have an important bearing upon the titles of about 26,000 acres more, a test case of which is now also pending in the Supreme Court of the United States, Term No. 1251. These lands are in the possession of settlers upon them, and the unsettled condition of the title is a constant source of annoyance to the parties interested, and an irritation among themselves, and a great injury to the community.

The appellant is desirous to have it brought to a hearing and settled as soon as it consistently can, and we think the best method to accomplish this would be to ask your Department to make application to the Supreme Court for its advancement, in which we would also join or consent. The cause would probably not be advanced upon appellant's application against the protest of your office, but if your Department are consenting to advancement, the application would come with more force from you, with our consenting.

We make this application direct to your office for the reason the Mr. E. C. Hughes who had charge of and tried the cause as in the circuit court, as special assistant United States attorney, has removed from this State, and is now, we think, in the State of Washington, and we understand has closed his connection with the cause. We, however, inclose a letter from him recommending the advancement.

Will you kindly advise us, as soon as convenient, whether you will consent to make such application for advancement; and, if so, when some action will probably be taken upon it from your office?

Very respectfully,

J. H. & C. M. SWAN,
Attorneys for Appellant.
J. H. SWAN,
Of Counsel.

FORT DODGE, IOWA, *January* 25, 1892.

Col. J. H. SWAN,
Sioux City, Iowa:

DEAR SIR: I am in receipt of your favor of the 21st instant, saying that you have received from the clerk of the Supreme Court a printed copy of the record in the case of the United States *vs.* The Sioux City and St. Paul Railroad Company, involving the title to certain lands in O'Brien County, and that you desired to make application to have the case advanced upon the docket so that it may be heard and decided at as early a day as possible.

You wish to know whether I would join in the application to the Attorney-General asking him to apply to the court to have the case advanced. You will remember that I have taken no active part in the trial of the case. The Government was represented by Hughes, and joined with

him were Joy, Hudson & Call, of your city, who were representing the interests of certain settlers upon the land. I devoted considerable time to an investigation of this case, and was in frequent consultation with the attorneys in charge of it.

I fully agree with you that it is very important that this case should be finally disposed of in the Supreme Court of the United States at as early a day as possible.

There are many settlers upon the lands in controversy, and it is of the greatest importance to them that they should know what their rights are.

If Mr. Hughes or the Attorney-General should ask my opinion in this matter, I should certainly advise that the case be advanced, if possible, on the docket of the Supreme Court.

It is a case of that character that I think entitles it to the early consideration of the court.

Very respectfully,

MAURICE D. O'CONNELL,
United States Attorney.

O

FILED.
DEC 15 1894
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894. (No. 149.)

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, AND ELIAS F. DRAKE AND AMHERST H. WILDER, TRUSTEES,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellees.

BRIEF FOR APPELLANTS.

J. H. SWAN, AND
GEO. B. YOUNG,
Counsel for Appellants.

H. M. SMYTH PRINTING COMPANY, ST. PAUL.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894. (No. 149.)

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, AND ELIAS F. DRAKE AND AMHERST H. WILDER, TRUSTEES, *Appellants*,

vs.

THE UNITED STATES OF AMERICA, *Appellees*.

BRIEF FOR APPELLANTS.

STATEMENT.

This is an appeal by the railroad company and its mortgage trustees, defendants below, from a final decree of the circuit court of the United States for the northern district of Iowa.

The suit was brought by the United States to establish their title to 21,979.85 acres of land, 21,179.85 acres whereof are situate in O'Brien county, and the residue (800 acres) in Dickinson county, in the state of Iowa, and to 1,288.13 acres not described.

Of the described lands 15,251.09 acres are in the place limits of the defendant company, and 6,728.76 acres are within its indemnity limits. They all lie alongside of and between the termini of the constructed portion of its authorized road.

The lands in controversy are part of a larger quantity long since patented by the United States to the state of Iowa as enuring to the defendant railroad company (which we will style simply the defendant) under the land-grant act of May 12, 1864. The plaintiffs charge that, of these patented lands, the defendant has already had conveyed to it by the state of Iowa, 1,288.13 acres (not described in the bill) in excess of the quantity it was entitled to have patented for the length of road constructed by it; and that the company, having already received such excessive quantity of lands, is not entitled to the 21,979.85 acres described in the bill, and not yet conveyed by the state to the company.

The defendants' contention is that by the express terms of the act of congress, it is provided that on completion of each ten-mile section of the road, certified to by the governor of Iowa, 100 sections of the granted land shall be patented to the state for the use of the defendant company; that the lands described, together with all the other lands patented to the state and conveyed to the company, are far less in quantity than the 500 sections the defendant company was entitled to have patented on completion of the five ten-mile sections which have been built by it and certified by the governor. They further contend that even if an excessive quantity of lands has been patented, the lands in suit form no part of the excess, but were properly patented.

The case lies in a narrow compass. The facts appear fully and at large in an agreed statement (Record, 49-62,) and in Exhibits 7 to 35 inclusive, (Record, 65-250,) forming part of such statement. They are succinctly and very clearly stated in the opinion of Judge Shiras in the circuit court (Record, 251,) and are as follows:

I.

On May 12, 1864, congress made a grant of land to the State of Iowa, by an act approved on that day. (The act is in the Record, pp. 11-14, as Exhibit 1 to the bill of complaint, and is found in 13 Stat. 72; 2 U. S. Land Laws, 766.)

The sections of the act material in this case are as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, that there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines River; also, to said State, for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main Street, South McGregor, in said State, in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State line, in the county of O'Brien in said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said roads; but, in case it shall appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or

any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands, thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid: *Provided*, that the lands so selected shall in no case be located more than twenty miles from the lines of said roads: *Provided, further*, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States.

"SEC. 3. *And be it further enacted*, that the lands hereby granted shall be subject to the disposal of the legislature of Iowa, for the purposes aforesaid and no other. And the said railroads shall be, and remain, public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

"SEC. 4. *And be it further enacted*, that the lands hereby granted shall be disposed of by said State, for the purposes aforesaid only, and in manner following, namely: When the Governor of said State shall certify to the Secretary of the Interior that any

section of ten consecutive miles of either of said roads is completed in a good, substantial, and workmanlike manner as a first-class railroad, then the Secretary of the Interior shall issue to the State patents for one hundred sections of land for the benefit of the road having completed the ten consecutive miles as aforesaid. When the Govenor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner, for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time, made as aforesaid, additional sections of lands shall be patented as aforesaid, until said roads, or either of them, are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other: *Provided*, that if the said McGregor Western Railroad Company, or assigns, shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in this act, then the State may resume said grant, and so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time as the State shall determine: *Provided, further*, that if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine: *And provided, further*, that said lands shall not in any manner be disposed of or encumbered, except as the same are patented under the provisions of this act; and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

"SEC. 5. *And be it further enacted*, that as soon as the Governor of said State of Iowa shall file or cause to be filed with the Secretary of the Interior

maps designating the routes of said roads, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act."

II.

On April 3, 1866, the state of Iowa accepted the grant, and transferred to the defendant that part of it made in aid of the road from Sioux City to the Minnesota line, by an act of the legislature approved on that day, the material sections of which are as follows (Record, 14):

"*An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act for a grant of lands in alternate sections to aid in the construction of a railroad in said State.'*

"SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, that the lands, rights, powers and privileges, conferred upon the State of Iowa by the act of Congress entitled 'An act to aid in the construction of a railroad in the State of Iowa,' approved May 12, 1864, be, and the same are hereby accepted, upon the terms, conditions and restrictions contained in said act of Congress.

"SEC. 2. That so much of the lands, interests, rights, powers and privileges as are or may be granted and conferred in pursuance of the act of Congress aforesaid, for the purpose of aiding in the construction of a railroad from Sioux City, in the State of Iowa, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the West Fork of the Des Moines river, be, and the same are hereby disposed of, granted, and conferred upon the Sioux City and St. Paul Railroad Company, a body corporate existing under and by virtue of the laws of the State of Iowa.

"SEC. 6. The said company is hereby authorized and empowered to select and designate the point

upon the south line of the State of Minnesota, to which the said road shall be built, between the Big Sioux and the west fork of the Des Moines rivers, as designated in said act of Congress."

III.

On April 20, 1866, another act on the same subject was passed, (Record, 16,) as follows:

"SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, that the lands, rights, powers duties and trusts conferred upon the State of Iowa by an act of Congress, approved July 12, 1864, entitled 'An act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State,' are hereby accepted by said State, upon the terms, conditions and restrictions contained in said act of Congress.

"SEC. 2. Whenever any lands shall be patented to the State of Iowa, in accordance with the provisions of said act of Congress, said lands shall be held by the State in trust for the benefit of the railroad company entitled to the same by virtue of said act of Congress, and to be deeded to said railroad company as shall be ordered by the Legislature of the State of Iowa, at its next regular session, or at any session thereafter."

IV.

On March 24, 1868, another act was passed correcting the clerical error in the reference, in the first section of the act last quoted, to the act of congress of May 12, 1864. (Exhibit 4; Record, 16-17.)

V.

On September 25, 1866, the defendant filed in the office of the secretary of state of Iowa, its written acceptance of the congressional grant and of the state act of April 3, 1866. (Exhibit 5; Record, 17.)

VI.

Between September 27 and October 4, 1866, the defendant surveyed and located on the ground its line from Sioux City to the Minnesota line in Range 41, and on April 2, 1867, filed a properly certified map of the line thus located with the governor of the state, who on July 16 caused the map, certified by himself and the secretary of state of Iowa, to be filed with the secretary of the interior, who on that day accepted it, and transmitted it to the general land-office, where it was filed ~~January~~ July 17, 1867.

The map and certificates are Exhibit 6 to the bill. (Record, 18-19.) The secretary's letter, accepting and transmitting the map is Exhibit 7 to the stipulation. (Record, 65.)

VII.

Upon the map thus accepted and filed, the commissioner laid down the 10-mile and 20-mile limits of the grant; and on August 26, 1867, transmitted a copy of the map to the local land-office at Sioux City, with an order of withdrawal of the lands within both limits.

This order and the map are Exhibits 7 and 8. (Record, 65.)

The terminal point of the location on the Minnesota line was selected not by the state directly, but by defendant, as authorized by section 6 of the Iowa act of April 3, 1866. (Record, 51.)

All the foregoing matters are embraced in par. 1-10 of the agreed statement. (Record, 49-50.)

In 1869 the defendant selected all the indemnity lands along the whole located line. (Record, 61,

par. 52.) And the approval of these selections is recited in the patents.

VIII.

In 1872 the defendant began the construction of its line from a point of connection with the St. Paul & Sioux City Railroad at the Minnesota state line in Range 41 west, and on September 25, 1872, had completed it to Le Mars, in Plymouth County, Iowa, a distance of 56 13/100 miles, in the direction of Sioux City. On February 4, 1873, it filed a duly certified map of such construction with the secretary of the state, which map, further certified by the governor and secretary of the state, was filed with the commissioner of the general land-office on February 10, 1873. A copy of the map and certificates is Exhibit 8. (Record 51, par. 11.)

IX.

Prior to this time, and as construction proceeded, the governor had from time to time certified to the secretary of the interior, as provided in section 4 of the act of May 12, 1864, to the completion of various sections of 10 miles (in all five sections, being 50 continuous miles) from the Minnesota line in the direction of Sioux City, as a first-class railroad, etc. These certificates were made as follows:

July 26, 1872, 2 sections or 20 miles.
Aug. 10, 1872, 1 section or 10 miles.
Feb'y 4, 1873, 2 sections or 20 miles.

(Record, 51-2, par. 12; Exhibits, 9, 10, pp. 65-7.)

X.

In addition to the 56 13/100 miles between the Minnesota line and Le Mars, the defendant also built, in 1872, one and 1/10 miles of track in Sioux City, making in all 57 23/100 miles. (Record 54, par. 27, 28.)

XI.

It was the evident intention of congress in the grant to ~~plaintiff~~ defendant and in the enlargement (by section 7 of defendant's granting act of May 12, 1864) of the grant made to Minnesota by act of March 3, 1857, for a road from St. Paul to the southern boundary of Minnesota in the direction of the mouth of the Big Sioux River, to secure a continuous through line of railroad between St. Paul and Sioux City, (*St. Paul & S. C. R. Co.* v. *Winona & St. Peter R. Co.*, 112 U. S. 720, 728,) thereby making a route from Lake Superior (and other points reached by land-grant railroads beyond St. Paul) and the various points reached by land-grant railroads beyond Sioux City.

It was therefore proper for defendant, even if it was not its plain duty, a duty the department would have insisted on, to so build its road as to make connection with the St. Paul & Sioux City road in Minnesota. The defendant accordingly built from the terminus of that road toward Sioux City.

Having reached Le Mars, the defendant encountered this state of things: Le Mars and Sioux City were already connected by a land-grant railroad over which the United States had the same rights and the same facilities of transportation, in every

respect, they would have had if such line had been built by defendant. Should defendant build from Le Mars to Sioux City, a distance of 25 miles, it would parallel the existing road by another in close proximity (as close as two lines could be) to it, a road which was not required by the interests of the United States, or the state of Iowa, or the inhabitants of the country traversed by it. No new country would be opened to settlement, and no new line of transportation was needed. The new line would simply be a detriment to that already constructed under the authority and with the aid of the United States.

Accordingly the defendant did not build those 25 miles, nor have any patents ever been issued or asked for because of any such construction.

XII.

The road thus occupying the route from Le Mars to Sioux City was that of the Iowa Falls & Sioux City Co., successor of the Dubuque & Sioux City Co., and which has itself been succeeded by the Illinois Central Co.

The grant to Iowa of May 15, 1856, (11 Stat. 9; 2 U. S. Land Laws, 762,) provided, *inter alia*, for a line from Dubuque to Sioux City. The state conferred this on the Dubuque & Sioux City Co., which located its line and filed maps of definite location in 1856; and prior to 1870, its successor, the Iowa Falls & Sioux City Co., completed its road to Le Mars and thence to Sioux City.

The located and constructed line of that company, with its place and indemnity limits, as well as the line and limits of defendant and the Chicago, Mil-

waukee & St. Paul Co., are shown on the map at page 32 of the Record, which is Ex. A to defendants' answer. (Record, 54, 55, par. 26, 30; and see Bill, par. 23, Record, 9.)

The defendant, having thus built its road so as to form with the St. Paul & Sioux City Railroad a continuous line from St. Paul to Le Mars, at once obtained by lease the right to operate its trains on the road of the Iowa Falls & Sioux City Co. from Le Mars to Sioux City, and from that time the defendant and the St. Paul & Sioux City Co. and their grantee, (the Chicago, St. Paul, Minneapolis & Omaha Ry. Co.,) "have continued to run and operate the same as one continuous line of railroad from St. Paul, Minnesota, to Sioux City, Iowa." (Record, 57, par. 40. And see Ex. 28, pp. 198-9; Ex. 29, pp. 200, 202-3, etc.)

XIII.

At the time of the passage of the act of congress of May 12, 1864, and at the time of location and until the time of construction of defendant's road, the region covered by the grant north of Plymouth county had few settlers and there were few attempts at farming. In the more northern counties through which the road was located the land was mostly government land, and the same was true of the southerly counties of Minnesota traversed by the St. Paul & Sioux City Railroad. (Record, 62, par. 53.)

XIV.

The governor's certificates of construction of five ten-mile sections, and the map of constructed line

from the Minnesota line to Le Mars, (56 18/100 miles,) duly certified by him, having been made and filed, as above stated, the secretary of the interior caused to be patented to the state, for the benefit of defendant, all the place and indemnity lands within the limits of the grant, and selected as above stated, (par. VII, *supra*,) the patents being issued as follows:

October 16, 1872	191,464.04 acres.
June 17, 1873	205,374.76
January 25, 1875	10,911.41
June 4, 1877	160.00
	407,910.21

(Record, 52, par. 13-16; Ex. 11, pp. 67-84; Ex. 12, pp. 84-103; Ex. 13, pp. 103-110; Ex. 14, pp. 110-112.)

One 40-acre parcel was patented twice, in this wise: The patent of June 17, 1873, embraces, *inter alia*, *N.*½ of S.E.¼, Sec. 5, T. 95, R. 42. (Ex. 12, p. 92.) The patent of January 25, 1875, embraces, *inter alia*, *E.*½ of S.E.¼, of the same section. (Ex. 13, p. 109.) The N.E.¼ of S.E.¼ of this section is included in both the foregoing descriptions, and so was patented twice, and its area (40 acres) twice counted in the foregoing statement. Making the proper correction, and the quantity of land actually patented to the state was 407,870.21 acres.

(And see Ex. 21, p. 165.)

The patent of June 4, 1877, was of land in an *even* section, in lieu of a quarter of an *odd* section relinquished under the act of June 22, 1874.

(Ex. 14, p. 110.)

XV.

As appears by the stipulation and the patents the lands patented had in each case been selected, etc., in accordance with the act of May 12, 1864, and the rules and regulations of the general land-office. (Ex. 11, p. 68; Ex. 12, p. 85; Ex. 13, p. 104.) The indemnity lands along the whole located line were selected in 1869. (Record, 61, par. 52.)

XVI.

The state made special provision for conveyance to defendant of the lands patented under the act of May 12, 1864, by the following act approved March 13, 1874:

"*An act authorizing and directing the Governor to certify to the Sioux City & St. Paul Railroad Company certain lands named therein.*

"*Be it enacted by the General Assembly of the State of Iowa:*

"SECTION 1. That the Governor of the State of Iowa be and he is hereby authorized and directed to certify to the Sioux City & St. Paul Railroad Company any and all lands which are now held by the State of Iowa in trust for the benefit of said railroad company, in accordance with the provisions of section 2, of chapter 144 of the laws of the eleventh General Assembly.

"SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed."

(Record, 52, par. 17; Ex. 15, p. 112.)

XVII.

The lands thus patented comprised all the lands in the place and indemnity limits, as established in 1867, along the 83⅛ miles of defendant's located line, which had not been disposed of to settlers and

others, or under earlier grants, at the date of definite location of such line.

The quantity in the 10-mile and in the 20-mile limits, and the ultimate disposition of the lands appear *infra*, par. XX.

In the first instance the state conveyed to the defendant 322,412.61 acres. In the suit brought by the Chicago, Milwaukee & St. Paul Ry. Co., mentioned in the next paragraph, it was adjudged that, of the lands patented, a very large part, viz., 79,435.41 acres (some of which had and some had not been conveyed by the state to the defendant,) had been improperly patented for defendant, and they were recovered by that company. So that the total quantity patented to the state for defendant (and the total quantity enuring under the grant for defendant's line) was reduced to 328,474.80 acres. And the total quantity conveyed by the state to defendant was reduced to..... 280,725.29 acres.

XVIII.

Of the lands patented to the state, as well those conveyed as those not conveyed by the state to defendant, a considerable part (including all of the 21,979.85 acres described in the bill) were in the overlapping limits of the grant for defendant's road and the grant made by the same act for the McGregor Western Railroad. The quantity patented in the overlapping place limits was 50,536.72 acres, and there was a large quantity in the indemnity limits. (Record, 57, par. 41.) A list of all the place lands in such overlapping limits, as such limits were estab-

lished in 1867 and continued without change until, in 1887, (long after all the lands in suit were patented,) they were attempted to be changed by Commissioner Sparks, is Exhibit 26, p. 185.

After the lands in suit were patented to the state, and on April 7, 1879, the Chicago, Milwaukee & St. Paul Railway Co., (which we shall style for brevity the Milwaukee Co.,) having succeeded to the rights of the McGregor Co., and having located and built the line of that company, (Record, 52, par. 18,) brought suit in the U. S. Circuit Court for Iowa to establish its title to a large quantity of the patented lands, making parties defendant this defendant railroad company and its mortgage trustees, the defendants in this suit, and also the governor and the register of the state land-office of the state of Iowa. (Record, 52, par. 19.)

All the defendants, including the governor and register, answered the bill. (Id. 52-3, par. 20-21.)

(The bill in that suit is Ex. 16, p. 112. The answer of these defendants is Ex. 17, p. 122; and the answer of the governor and register is Ex. 18, p. 136.)

After a final decree of the circuit court, and the decree of this court on appeal, (see *Sioux City & St. Paul R. Co. v. Chicago, Mil. & St. Paul Ry. Co.*, 117 U. S. 406,) a final decree was entered in the circuit court, on May 21, 1886, dividing the lands in the overlapping limits in accordance with the mandate of this court. (Record, 53, par. 22; Ex. 19, p. 136.)

All the lands described in the bill in this suit were involved in and were passed upon by the decree in that suit. (Record, 53, par. 25.) The court adjudges

and decrees as to such of the *place* lands as are outside the place limits of the Milwaukee Co.,

—"that the defendant Sioux City & St. Paul Railroad Company is entitled thereto, and that the state of Iowa or the proper officers of said state should of right make, execute and deliver patents therefor to the said defendant Sioux City & St. Paul Railroad Company. And it is further ordered, adjudged and decreed, and this court, by virtue of the power therein vested, doth order, adjudge and decree, that the defendant Sioux City & St. Paul Railroad Company is the owner of and entitled to, and is hereby vested with the title in fee to, all of the lands above mentioned and described in class No. 3." (Record, 152.)

The lands in Class No. 3 are listed and fully described in the decree. (Record, 143.)

As to place lands in Class No. 1 of the decree (Record, 137,) being within the common place limits, and as to Class No. 4, (Record, 147,) being lands within the common indemnity limits, of the two companies, the decree, in language similar to that just quoted, adjudges the two companies to be owners in fee as tenants in common in equal moieties, and as such entitled to patents from the state of such lands as have not been patented, and directs partition and proper releases. (Record, 150–151; 152–3.)

And the court also adjudges and decrees

—"that the said defendant Sioux City & St. Paul Railroad Company has fully complied with all the conditions of said act of congress approved May 12, 1864, * * * and with the act of the legislature conferring said grant upon the said defendant Sioux City & St. Paul Railroad Company, so far as relates to the lands in question, and fully completed the railroad, within the time specified in said act of congress and said act of the legislature, from the state

line of the said state of Minnesota, in a southerly direction, to Le Mars, in the state of Iowa, a distance of fifty-six and 25/100 miles, and is entitled to receive all the lands applicable to said grant from said state line of the state of Minnesota to the extent of ten sections per mile for each and every mile of road constructed, including all the lands hereinbefore described as belonging to that grant.' '(Record, 150.)

The passages quoted are important for the reason, among others, that the point that the state of Iowa had not selected any terminal point on the Minnesota line for defendant's road, and the point that the defendant had built only to Le Mars, etc., and had not built on its line of definite location, were put forward in the bill in that case as grounds why this defendant should not hold the lands here in controversy, (Record, 116–117,) in language nearly identical with that adopted in the bill in this cause. (Record, 4–5, par. 13–15.)

The commissioners' report of partition of lands in the common place and the common indemnity limits (Classes 1 and 4) is Exhibit 20, pp. 154–162. The list of lands in place limits set off to this defendant is on pages 160–1, and the indemnity lands set off to it on pages 161–2.

In these lists, and in the Class 3 list of the decree, are embraced all the lands described in the bill in this cause.

In September and November, 1886, the state patented to the Milwaukee Co. all the lands awarded to it by such decree, which had not already been patented or certified by the state. But the state has entirely disregarded the above-quoted passage of the decree, that the lands here in controversy should be by it conveyed to this defendant company.

XIX.

On March 16, 1882, nearly 18 years after the passage of the granting act of May 12, 1864, and nearly 16 years after the grant had been transferred to defendant by the act of April 20, 1866, and more than 15 years after defendant's acceptance had been filed with the secretary of the state, (Ex. 5, p. 17,) the legislature of Iowa passed an act, which, after reciting the act of congress of May 12, 1864, and the state act of April 3, 1866, and the defendant's failure to build from Le Mars to Sioux City, provides:

"SECTION 1. That all lands and all rights to land granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the State of Iowa which have not been earned by said railroad company by a compliance with the conditions of said grant, be and the same are hereby absolutely resumed by the State of Iowa, and that the same be and are absolutely vested in said State as if the same had never been granted to said railroad company." (Record, 58, par. 44; Ex. 30, p. 210.)

This act would in any case be inoperative to affect defendant's title to lands "earned." Such title was beyond the reach of legislative attack. And the act is in terms limited to lands "not earned." It does not attempt to question defendant's title to the lands in suit if they had been earned. And even in regard to lands not earned, the power of the state to resume the grant (no conditions other than those contained in the act of congress being expressed in its own grant to defendant) would seem to have terminated, under the fourth section of the act of congress, at the expiration of fifteen years from the

date (September 25, 1866,) when defendant filed its acceptance of the grant—that is on September 25, 1881.

On March 27, 1884, the state legislature passed an act, reciting among other things the act last quoted and providing:

"SECTION 1. That all lands and rights to lands resumed and intended to be resumed by chapter 107 of the acts of the Nineteenth General Assembly of the State of Iowa," (i. e., the act of March 16, 1882,) "are hereby relinquished and conveyed to the United States.

"SEC. 2. The Governor of the State of Iowa is hereby authorized and directed to certify to the Secretary of the Interior all lands which have heretofore been patented to the State to aid in the construction of said railroad, and which have not been patented by the state to the Sioux City & St. Paul Railroad Company; and the list of lands so certified by the Governor shall be presumed to be the lands relinquished and conveyed by section one of this act: *provided*, that nothing in this section contained shall be construed to apply to lands situated in the counties of Dickinson and O'Brien." (Record, 58, par. 45; Ex. 31, p. 212.)

This act was of course inoperative on the lands here in question, all of which are situate in the counties of Dickinson and O'Brien.

Pursuant to these acts of the legislature, the governor of Iowa, on June 12, 1887, assumed to and in form did relinquish and convey to the United States 26,017.33 acres of the lands that had been patented to the state for defendant, but had not been conveyed to defendant. The lands so relinquished are all situated in Plymouth and Woodbury counties, and comprise none of the lands here in controversy. (Record, 58, par. 45.) They are colored blue on the map at page 32.

XX.

At the date of definite location of defendant's line, so much land in odd sections along the line had been disposed of to settlers, or been taken by the earlier grant of 1856, that there remained undisposed of in the place and indemnity limits as established by the commissioner of the general land-office on August 26, 1867, along the whole 83⅛ miles of such located line, (including the lands in overlapping limits of defendant and the McGregor Western Co.,) only the following quantity of lands, all of which were in the first instance patented to the state for defendant:

In the place limits along the whole line	212,067.66 acres.
In the indemnity limits along the whole line	195,842.55
	407,910.21

While all of these lands were patented to the state for the benefit of the defendant, yet, in the suit just mentioned, it was held that a large part of them, lying in the overlapping limits, were erroneously patented for defendant and should have been patented for the Chicago, Milwaukee and St. Paul Ry. Co., as successor to the McGregor Western Co., and they were decreed to that company, the quantity so decreed being as follows:

In place limits	25,269.86 acres.
In indemnity limits	54,165.55
	79,435.41 acres.

This left the total quantity of lands available to fill the grant for defendant's line as follows:

In place limits	186,797.80 acres.
In indemnity limits	141,677.00
Total passing under defendant's grant and remaining patented for it	328,474.80 acres.

Of the 407,910.21 acres originally patented for defendant, there were originally certified and conveyed to defendant by the state of Iowa, lands to the amount of 322,412.61 acres.

And of these lands there were decreed to the Milwaukee Co. (being included in the total of 79,435.41 acres recovered by that company)	41,687.52
So that there remain to defendant, of the lands so conveyed to it by the state, only	280,725.29 acres.

These lands are situate:

In the place limits	171,546.71 acres.
In the indemnity limits	109,178.58
	280,725.29 acres.

Of the 79,435.41 acres so decreed to the Milwaukee Co., 41,687.52 acres were lands that had been, and 37,747.89 acres had not been, conveyed by the state to the defendant. These last were directed to be and were conveyed by the state of Iowa to the Milwaukee Co.

The condition of the lands and the quantity remaining to fill defendant's grant after these transactions was as follows:

Quantity originally patented to state	407,910.21 acres.
Recovered by Milwaukee Co	79,435.41
Total quantity enuring to defendant's grant, (all of which was patented to the state)	328,474.80 acres.
Conveyed by the state to the defendant, and not recovered from defendant by the Milwaukee Co.	280,725.29
Residue of lands embraced in defendant's grant and patented to the state for defendant, but not conveyed by the state to defendant,	47,749.51 acres.
The state has never conveyed any of these 47,749.51 acres to the defendant. On the contrary, under the legislative act quoted in par. XIX, the governor executed to the United States a formal reconveyance of	26,017.33 acres.
Leaving patented to the state and not conveyed by the state to either company, and not attempted to be reconveyed to the United States by the state	21,732.18 acres.
This quantity being reduced by the 40 acres twice patented to the state (*supra*, par. XIV,) leaves	21,692.18 acres.

These are the lands the United States sues for. The quantity described in the bill and awarded by

the decree is 21,979.85 acres. The above statement, made from the agreed statement of facts, (Record, 57-8, par. 41-45,) agrees with that of secretary Lamar. (Ex. 23, pp. 168, 169, 172.)

From the foregoing statement it appears:

The total quantity of lands enuring to defendant's grant is	328,474.80 acres.
And this is also the quantity that remained patented for defendant after recovery by the Milwaukee Co.	
If the defendant is entitled to have patented 100 sections of land for each ten miles of completed road, then for the 50 miles it is entitled to 500 sections or	320,000.00 acres.
It has had conveyed to it by the state, and not recovered from it by the Milwaukee Co	280,725.29
Additional quantity the defendant is still entitled to hold under the patents and to have conveyed to it by the state	39,274.71 acres.
If it continues to hold the lands described in the bill, to-wit	21,979.85 acres.
It will still require, to make up the 320,000 acres, and to be taken from the 26,017.33 acres which the state has attempted to reconvey to the United States	17,294.86 acres.

This quantity should probably be increased by the difference between 21,979.85 acres, the quantity here sued for, and 21,692.18 acres, the quantity which the stipulation shows and Secretary Lamar determined to be the total amount of lands patented to the state, which it had not conveyed to either company, nor attempted to reconvey to the United States. But for the purposes of this case the correction is unnecessary as the exact quantity is not material.

XXI.

All the lands in suit lie in townships 95 to 98, ranges 38 to 42 inclusive.

The road both as located and as constructed intersects the Minnesota state line in township 100, range 41. Le Mars is in township 92, range 45. The southerly end of the five ten-mile sections of constructed road is in township 93, range 45.

So that all the lands in controversy, place as well as indemnity lands, lie alongside of the 50 miles of road actually constructed, coterminous with such constructed road. This circumstance, however, only becomes material in case the court accepts the plaintiffs' construction of the act of congress.

(See Map, Ex. A, in Record at page 32. And see Record, 54–5, par. 30.)

And as before stated they were all included in the above-mentioned litigation with the Milwaukee Co. (*Supra*, XVIII; Record, 53, par. 25.)

XXII.

The state of Iowa has levied and collected from defendant taxes on these lands in the year 1884 and

each succeeding year. (Record, 60, par. 47; Ex. 32, pp. 214–237.)

XXIII.

As before stated, the commissioner of the general land-office, on the filing of defendant's map of definite location, and as early as August 26, 1867, fixed and laid down on that map the 10-mile and 20-mile limits of the grant. (*Supra*, par. VII; Record, 51, par 9.)

That this was approved by the secretary of the interior is evident from the fact that the patents issued by him, under the 4th section of the act, describe the patented lands according to the limits there laid down.

And it does not appear that the limits so fixed were ever questioned by anybody until, in 1887, the then commissioner (Mr. Sparks) made a map of defendant's location, on which he laid down place and indemnity limits differing from those that had been approved and acted on for 20 years. (Record, 55, par. 31; Exhibit 23—map.)

It nowhere appears that this action of the commissioner in reversal of that of his predecessor which had been approved and acted on by successive secretaries of the interior, was ever approved by Mr. Lamar, the then secretary and Mr. Sparks's superior, or by any of his successors. Nor does it appear in the record from what source the commissioner derived his authority to overrule the official action of secretaries of the interior.

Lists of lands in place and indemnity limits, and within and without the limits in conflict with the Milwaukee Company, based on the new limits so

attempted to be made by the commissioner in 1887, on the Map, Ex. 28, are mentioned in the Record, pp. 55-6; par. 31-35. (The lists are Exhibits 24, 25, pp. 172-185.) They do not include the lands along the *whole* located line, but only those along the *50 miles*. The certificate to Exhibit 25 is in this respect misleading. (See Stipulation, par. 33, p. 55.)

XXIV.

The defendant has sold and conveyed to innocent purchasers all the lands in its indemnity limits that had been certified or patented to it by the state of Iowa. At the date of bringing this suit the average value of the more remote of such lands was $7 per acre. (Record, 56, par. 36-7.)

XXV.

On August 26, 1871, after the definite location of its line but before the construction of any part of it, the defendant company executed to the defendant E. F. Drake and to Alexander H. Rice, as trustees, a trust deed or mortgage of all the lands claimed by it as enuring under the act of congress of May 12, 1864, a copy of which deed is Exhibit 33, pp. 238-245, and is also Exhibit X to the answer of the defendant trustees. (Record, 36-44.) Mr. Rice having resigned, the defendant A. H. Wilder was made and now is trustee in his place. (Record, 60, par. 48.)

On February 5, 1884, after all the lands had been patented to the state, and after the defendant company had built its road to Le Mars, the defendant company executed and delivered to the defendants Drake and Wilder, as such trustees, a further con-

firmatory deed or mortgage. A copy of such deed of the lands in O'Brien county is Exhibit G to the answer of the trustees, (Record, 44,) and is also Exhibit 34, p. 245. A like deed was made of lands in each county where the lands were situated. (Record, 61, par. 49.)

In each of these confirmatory deeds the lands covered by the deed are listed and specifically described. (See Record, 46, 247.)

These mortgages or trust deeds were given to secure and provide for the payment of the principal and interest of an issue of $2,800,000 of bonds, of the form described in the original deed. (Ex. 33, pp. 238–9.) The bonds are payable, principal and interest, solely from the proceeds of land sales to be made by the trustees. (Id.) There has been realized from land sales an amount sufficient to pay off $2,140,000 of the bonds, and bonds to the amount of $660,000 are still outstanding. (Record, 61, par. 50.)

XXVI.

The defendant's railroad was sold and conveyed in 1879, by the deed Exhibit 28, (Record, 198,) to the St. Paul & Sioux City Railroad Co., which, in 1881, sold and conveyed it, by the deed Exhibit 29, (Record, 200,) to the Chicago, St. Paul, Minneapolis & Omaha Ry. Co., which still owns and operates it. And the defendant company has no property except such lands as may enure to it under the land grant of May 12, 1864, out of the lands patented to the state and not conveyed to it by the state, all which lands are pledged as security for the unpaid balance of $660,000 of indebtedness mentioned *supra*, XXV. (Record, 56, par. 39.)

XXVII.

Between 1882 and 1885, divers persons entered on certain of the lands described in the bill, and made claim to them under the homestead and pre-emption laws. Their applications to enter the lands were rejected by the local land-officers, and the decisions were appealed from. These persons have continued to improve and cultivate the lands, making in some instances valuable improvements, and the defendant company has brought actions of ejectment against them in the state court of O'Brien county, which actions are still pending. Of these lands Ex. 35, p. 248, is a correct list. (Record, 61, par. 51.)

XXVIII.

On January 15, 1887, the settlers on the lands in controversy and on other lands embraced in the decree in the Milwaukee Co.'s suit and there referred to as not patented by the state, made application to the secretary of the interior that he request the attorney general of the United States to bring suit in the name of the United States to recover the lands. At the hearing on the application arguments were made by counsel for defendant and for the Milwaukee Co., after which, and on July 26, 1887, the secretary made his decision in writing, addressed to the commissioner of the general land-office, in which he decided that suit should be brought to recover, not 21,979.85 acres, as claimed in the bill, but 17,590.30 acres only. (Record, 53, par. 23; Ex. 21, pp. 163-172.)

In this decision the secretary holds that but for the conflict with the Milwaukee Co., the defendant

would be entitled, for the five 10-mile sections built by it, to 500 sections or 320,000 acres. But he finds (p. 170) that there were in the common granted limits of the two roads 70,345.67 acres. (The discrepancy between this quantity and the quantity—50,536.72 acres—of place lands involved in the suit between the Milwaukee Company and this defendant, is accounted for by the fact that some 20,000 acres of lands in the common place limits had been taken up by settlers before either road was located, and so did not enure to either company. These odd sections and parts of sections are uncolored on the map at page 32 of the Record.)

The secretary, taking the area of conflict at 70,345.67 acres, holds that one-half of these were not granted to defendant but to the Milwaukee Co., and holds that the defendant cannot have indemnity for such one-half, whether taken up by settlers or awarded the Milwaukee Co., and states the defendant's rights as follows:

100 sections each, for five 10-mile sections of road	320,000.00	acres.
Less one-half of the quantity (stated at 70,345.67 acres) in the conflicting place limits of the two grants	35,172.83	
Amount to be patented on completion of five 10-mile sections	284,827.17	acres.
Already patented to state and conveyed to defendant	280,725.29	
Amount defendant is entitled to, but which has not yet been conveyed	4,101.88	acres.

Total amount patented to state and not patented or conveyed by it or relinquished to the United States.	21,692.18 acres.
Of this there belongs to defendant	4,101.88
The United States are therefore entitled to recover the residue, that is.....	17,590.30 acres.

For which quantity only he directs suit.

XXIX.

The circuit court did not accept the new place limits or the secretary's opinion that defendant could not have indemnity for the lands lost to the Milwaukee Co. or to settlers in the conflicting place limits.

The learned judge held (Record, 256-7) that the original limits must govern, and held also (Record, 255-6) that defendant was entitled to indemnity for lands in place lost by reason of the grant to the McGregor Western Road, just as it would be if that grant had been made by a prior and not by the same act.

XXX.

This suit was begun October 4, 1889. More than 90 days prior thereto a letter was written to the governor of the state of Iowa and to the defendant company, demanding a reconveyance of and a relinquishment of all rights to, not merely the 17,590.30 acres for which the secretary decided that demand should be made, but of all the 21,979.85 acres described in the bill. (Record, 54, par. 29.)

It does not appear by whom the letter was written, and it certainly did not accord with the views of the secretary expressed in his decision. Demand by the secretary for reconveyance is made prerequisite to a suit like this by section 2 of the act of congress of March 3, 1887. (24 U. S. St. 556.)

XXXI.

Upon the facts above stated the defendants contended in the court below, as they contend here, (and the same contention was made before the secretary of the interior) that on the completion and certification of each ten-mile section, the defendant company was entitled to have patented to the state for its use 100 sections of land, and for the five ten-mile sections so completed and certified, it was entitled to have patented 500 sections or 320,000 acres; that this quantity is not subject to reduction, either because the whole quantity of lands enuring to the grant is less than ten sections per mile for each of the 83⅛ miles of located road, or because of the conflict in the place limits of the two companies.

And as it is conceded that the lands in controversy, with the other lands patented for defendant and not recovered by the Milwaukee Co., or in form reconveyed by the state to the United States, are less than 500 sections, they contend that defendant's right to patents for these lands is perfect and indefeasible.

1. The ground on which the secretary overruled this contention, his admission that, but for the conflict, defendant would be entitled to patents for 320,000 acres, and his deduction of one-half the

quantity in the conflicting place limits, appear, *supra*, XXVIII. His decision is that of the 21,979.85 acres of land in controversy here, the defendant is entitled to hold under the patents 4,101.88 acres

2. The attorney-general in the bill of complaint, opposes our contention on the ground that, although the act of congress says that 500 sections or 320,000 acres shall be patented on completion of the five ten-mile sections, still, because of the conflict with the Milwaukee Co., the defendant is not entitled to have patented, on such completion, any greater amount than the quantity contained in the odd sections in the place limits along the 50 miles of constructed road, less one-half the quantity in the odd sections in the common place limits. The bill says that the total quantity in the odd sections in the place limits along the 50 miles is 314,346.54 acres; that the quantity so to be deducted is 34,909.38 acres, and therefore the amount the defendant was entitled to have patented was but 279,237.16 acres, or 1,288.33 acres less than the quantity already conveyed to it by the state from the patented lands. (Record, 6, par. 19-20.)

3. The circuit court, while in terms holding the positions both of the secretary and of the attorney-general to be untenable, and holding that the conflict in the place limits in no way diminished the quantity of lands defendant was entitled to have patented on completion of the 50 miles, overruled the contention of defendants on another ground. That court held that although the act of congress in terms directed that patents for 100 sections of land should issue on completion of each 10-mile section of road,—being

500 sections or 320,000 acres for the fifty miles,—still the defendant was entitled to that quantity only in case the quantity of land actually enuring to the grant for the 83⅛ miles of located line should be equal to 10 sections for each mile. And that the quantity defendant was entitled to have patented for the 50 miles was one which should bear the same ratio to the total quantity actually enuring to the grant, which the 50 miles of completed line bears to the 83⅛ miles of located line. The total quantity actually enuring to the grant (depleted as it was by the earlier and the contemporaneous grant and by losses to settlers,) was but 328,474.80 acres. (Par. XX, *supra*.)

The rule of the circuit court leads therefore to the following result:

83⅛ : 50 = 328,474.80 : 197,479.84 acres.

That is, at the rate of 3,949.59 acres, or six and ⅛ sections per mile, making 61⅔ sections, instead of 100 sections, for each ten miles of completed road.

The circuit court, however, seems to have considered that the six and 18/100 miles between the end of the fifty miles and Le Mars, and perhaps also the one and 1/10 miles built in Sioux City, should be taken into account in determining the quantity of lands the defendant was entitled to have patented. If this is done the quantities would be 221,690.82 acres or 226,035.36 acres, according as both or only one of these additional pieces are counted.

4. For each ten miles of road constructed, the act of congress says, and we contend, there should be patented..... 100 sections.
The secretary says but..... 89 sections.
The attorney general says but..... 87¼ sections.
The circuit court says but..... 61⅔ sections.

ASSIGNMENT OF ERRORS.

1. The circuit court erred in deciding and decreeing that upon completion of the 50 miles of road built by the defendant company, and the due certification thereof by the governor of Iowa to the secretary of the interior, the defendant company was not entitled to have patented to the state of Iowa for its use, one hundred sections of land for each of the five ten-mile sections of completed road comprised in said fifty miles.

2. The circuit court erred in deciding and decreeing that the lands described in the bill of complaint and in the decree appealed from were, or that any parcel thereof was, unlawfully or improperly patented to the state of Iowa for the use of the defendant company.

3. The circuit court erred in deciding and decreeing that the United States have title to or that they are entitled to recover the lands described in the bill of complaint and in the decree appealed from, or any part of said lands.

4. The circuit court erred in deciding and decreeing that the defendants, the trustees for *bona fide* purchasers of the mortgage bonds, were not entitled to protection against the plaintiffs' claim.

POINTS AND ARGUMENT.

The defendants' position is, that of the lands heretofore patented to the state for the use of the defendant, the following lands, to-wit:

All the lands conveyed by the state to the defendant company, and not recovered from it, being.....	280,725.29 acres
All the lands in controversy in this suit.....	21,979.85 acres
Making.....	302,705.14 acres
And of the lands in form reconveyed by the state to the United States (26,017.33 acres in all) lands to the amount of at least.....	17,294.86 acres
In all, at least.....	320,000.00 acres

were properly patented to the state of Iowa for the use of the defendant company, upon the completion of the five 10-mile sections of road and the governor's certification thereof. And that the defendant's title to such lands (whether, as we claim, a complete legal title, or whether an equitable title only) is indefeasible.

We maintain this because—

1. All of these 320,000 acres, being 500 sections, are lands embraced in the grant made by the act of congress of May 12, 1864, and in the grant by the state of Iowa to the defendant by the act of April 3, 1866. They are all of them part of the 328,474.80 acres in the place and indemnity limits of the line as

located between Sioux City and the Minnesota boundary, which passed under each of these grants.

2. The defendant completed 50 continuous miles of its road in five 10-mile sections, and the governor of the state certified thereto, all in conformity with the act of congress of May 12, 1864.

Therefore the defendant became entitled to have patents issue for its benefit for 500 sections or 320,000 acres of the granted lands. And the lands in suit and enough other lands to make 320,000 acres were properly patented to the state for defendant's use, out of the 328,474.80 acres which passed under the grant.

3. Defendant's title to the 320,000 acres required to be patented, and in fact patented, upon the completion and certification of the five 10-mile sections, cannot be defeated or impaired by its failure to complete the entire road.

And in answer to the position of the circuit court, we say:

4. The circumstance that but 328,474.80 acres passed by the grant for the entire 83⅓ miles of the road as located (an average of but 6⅓ sections per mile) affords no ground for holding that on completion and certification of each ten-mile section of road, the defendant was entitled to have patented only 61⅔ sections or any less quantity than 100 sections of the granted lands as required by the act of congress.

And in answer to the positions taken by the secretary of the interior in his decision, and by the attorney general in his bill of complaint, we say:

5. The quantity of 100 sections required to be patented on completion and certification of each ten-mile section is not to be reduced by reason of any deficiency in the area of the odd sections in the place limits along such completed section, or by reason of any reduction of the quantity of granted lands lying alongside such completed section caused by conflict with the grant for the McGregor Western (now Milwaukee) road.

Hence the question whether defendant's grant was of every odd section, or of only one-half of every odd section in the conflicting place limits, and the question of defendant's right to indemnity for lands in those limits recovered by the Milwaukee Co., and the question of the extent of its right to indemnity for lands in those limits disposed of to settlers, do not arise in this case.

6. But if the questions are properly in this case, then we say that the grant is of every alternate odd section in the place limits, whether within or without the conflicting place limits. And the defendant is entitled to full indemnity for all lands in odd sections recovered by the Milwaukee Co. or disposed of to settlers within those limits.

7. Even if an excessive quantity of lands has been patented, still the lands described in the bill form no part of such excess. They were properly patented, and the defendant cannot be deprived of them, though other lands may have been improperly pat-

ented. The right of the United States is limited to a cancellation of the patents for such other lands.

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8. And even should the United States be entitled to a decree as against the defendant company, the trustees defendants are entitled to protection as *bona fide* purchasers.

FIRST.

ALL OF THESE 320,000 ACRES, BEING 500 SECTIONS, ARE LANDS EMBRACED IN THE GRANT MADE BY THE ACT OF CONGRESS OF MAY 12, 1864, AND IN THE GRANT MADE BY THE STATE OF IOWA TO THE DEFENDANT BY THE ACT OF APRIL 3, 1866. THEY ARE, ALL OF THEM, PART OF THE 328,474.80 ACRES, IN THE PLACE AND INDEMNITY LIMITS OF THE LINE AS LOCATED BETWEEN SIOUX CITY AND THE MINNESOTA BOUNDARY, WHICH PASSED UNDER EACH OF THESE GRANTS.

I.

Upon the definite location of the road, the title to all of the lands in the odd sections in the place limits, *along the whole length of such located line* from Sioux City to the Minnesota boundary, which at that time had not been reserved or disposed of by the United States, and which were then free from pre-emption or homestead claims, passed from the United States and vested in the defendant company, or in the state of Iowa as trustee for the defendant.

And title to the indemnity lands, *along the whole located line*, vested in the defendant company, or in the state of Iowa as trustee for it, when selections of such lands were made and were approved by the secretary of the interior.

Selections were duly made, in 1869, of all the lands in odd sections in the indemnity limits that were subject to selection, along the entire located line. (Record, 61, par. 52; *supra*, par. XV.) These selections were approved by the secretary of the interior. The issuing of patents for them was an approval.

II.

That such was the effect of the location upon the lands in odd sections in the place limits, *along the whole length of the located line*, is settled law in this court.

Schulenberg v. Harriman, 21 Wall. 44, 60, 62.

Railroad Land Co. v. Courtright, 21 Wall. 310, 316.

Leavenworth, etc., R. Co. v. United States, 92 U. S. 733, 741.

Missouri, Kansas & Texas Ry. Co. v. Kansas Pacific Ry. Co., 97 U. S. 491, 496-7.

St. Paul & Sioux City R. Co. v. Winona & St. Peter R. Co., 112 U. S. 720, 726.

Sioux City & St. Paul R. Co. v. Chicago, Mil. & St. Paul Ry. Co., 117 U. S. 406, 408.

Wisconsin Central R. Co. v. Price County, 133 U. S. 496, 507.

St. Paul & Pacific R. Co. v. Northern Pacific R. Co., 139 U. S. 1, 5-6.

U. S. v. Southern Pacific R. Co., 146 U. S. 570, 593.

That the title to indemnity lands vests in the grantee on selection and approval of the selections by the secretary is equally beyond dispute.

Ryan v. Railroad Co., 99 U. S. 382, 386.

Cedar Rapids, etc., R. Co. v. Herring, 110 U. S. 27, 39.

Kansas Pacific Ry. Co. v. Atchison, Topeka & Santa Fe R. Co., 112 U. S. 414.

St. Paul & Sioux City R. Co. v. Winona & St. Peter R. Co., 112 U. S. 720, 731.

Barney v. Winona & St. Peter R. Co., 117 U. S. 228, 232.

Sioux City & St. Paul R. Co. v. Chicago, Mil. & St. Paul Ry. Co., 117 U. S. 406, 408.

Wisconsin Central R. Co. v. Price County, 133 U. S. 496, 512.

U. S. v. Missouri, Kansas & Texas Ry. Co., 141 U. S. 358, 374.

III.

The following extracts from opinions in some of the cases cited, state very clearly the position early taken and always maintained by this court in respect to grants like that involved here:

"That the act of congress of June 3, 1856, passed a present interest in the lands designated, there can be no doubt. The language used imports a present grant and admits of no other meaning. The language of the first section is '*that there be and is hereby granted* to the state of Wisconsin' the lands specified. The third section declares 'that the lands *hereby granted* to said state shall be subject to *the disposal* of the legislature thereof;' and the fourth section provides in what manner sales shall be made, and enacts that if the road be not completed within ten years, 'no further sales shall be made, and the lands unsold shall *revert* to the United States.' The power of disposal and the provision for the lands reverting both imply—what the first section in terms declares—that a grant is made, that is, that the title is transferred to the state. It is true that the route of the railroad for the construction of which the grant was made was yet to be designated, and until such designation the title did not attach to any specific tracts of land. The title passed to the sections, to be afterwards located; when the route was fixed, their location became certain, and the title, which was previously imperfect, acquired precision and became attached to the land."

Schulenberg v. Harriman, 21 Wall. 44, 60.

"The provision in the act of congress of 1856, that all lands remaining unsold after ten years shall revert to the United States if the road be not then completed, is no more than a provision that the grant shall be void if a condition subsequent be not performed." *Id.* 62.

Such a grant

"Creates an immediate interest and does not indicate a purpose to give in future. 'There be and is hereby granted' are words of absolute donation, and import a grant *in præsenti.* This court has held that they can have no other meaning; and the land department, on this interpretation of them, has uniformly administered every previous similar grant. *Railroad Co. v. Smith*, 9 Wall. 95; *Schulenberg v. Harriman*, 21 Wall. 60; 1 Lester, 513; 8 Opin. 257; 11 Opin. 47. They vest a present title in the state of Kansas, though a survey of the lands and a location of the road are necessary to give precision to it, and attach it to any particular tract. The grant then becomes certain, and by relation has the same effect upon the selected parcels as if it had specifically described them."

Leavenworth, etc., R. Co. v. United States, 92 U. S. 733, 741.

"As seen by the terms of the third section of the act," (of July 2, 1864,) "the grant is one *in præsenti;* that is, it purports to pass a present title to the lands designated by alternate sections, subject to such exceptions and reservations as may arise from sale, grant, pre-emption or other disposition previous to the time the definite route of the road is fixed. The language of the statute is 'that there be and hereby is granted' to the company every alternate section of the lands designated, which implies that *the property itself is passed, not any special or limited interest in it.* The words also import a transfer of a present title, not a promise to transfer one in the future."

St. Paul & Pacific R. Co. v. Northern Pacific R. Co., 139 U. S. 1, 5.

This passage is quoted in *United States v. Southern Pacific R. Co.*, 146 U.S. 570, 593, as a "late and clear declaration" of the law, and on page 594 the court reaffirms the decision in *Schulenberg v. Harriman:*—

"That by the grant title to the land passed to the state upon the location of the route; and that, though the road was not completed within the time specified, and though there was the provision that the unsold lands should revert, yet the title still remained in the state, held under a condition subsequent, and held until the government should take some steps to enforce a forfeiture."

IV.

On location of the road therefore, and on approval of the indemnity selections, the title to all the lands in the place and indemnity limits, *along the whole located line*, vested in the state, or in its grantee, the defendant company, even though no part of the road had then been built.

And no position can be maintained which is based on the assumption that there passed to the state or company the title to such lands only as were found to be alongside of that part of the road which was afterwards built, or on the assumption that such lands alongside the constructed road can alone be taken into account in determining the quantity of land embraced in the grant, and the quantity to be patented on completion of each ten-mile section.

V.

The effect of the first section of the act as a present grant, operating *proprio vigore* to vest a present title on its passage, and to vest title to the specific parcels of place lands on location and to the specific parcels

of indemnity lands on selection, is in no wise affected by the provision in section 4 for the issue of patents as ten-mile sections are completed and the completion certified by the governor.

The office of such patents is to afford evidence of the highest character, conclusive as against collateral attack and of great force as against a direct attack by the United States upon the patent, that (1) the lands patented are lands granted by the act, and (2) that in respect to such lands the conditions subsequent to the grant have been performed, that the lands patented are freed from those conditions, and are no longer subject to forfeiture for any failure to perform them, so that the patentee's title to the lands is indefeasible. See cases cited *infra*, under our third point.

VI.

The nature of the title vested in the defendant railway company on location of its road, and the selection of the indemnity lands.

By the second section of the legislative act of April 3, 1866,—(Record, 14; par. II, *supra;*)

"So much of the lands, interests, rights, powers and privileges as are or may be granted and conferred in pursuance of the act of congress aforesaid for the purpose of aiding in the construction of a railroad from Sioux City in the State of Iowa to the south line of the State of Minnesota at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines river, be and they are hereby disposed of, granted and conferred upon the Sioux City and Saint Paul Railroad Company, a corporation existing under and by virtue of the laws of the State of Iowa."

Like the grant by the United States, this grant by the state is a present grant. And it is a grant of *all* that the state had been granted by the United States. Even had it contained, as it does not, conditions subsequent, it would have operated to pass the title of the state, just as the grant by congress, in like terms, is held to transfer the title of the United States. As said in the case of a similar grant, (which, however, contained conditions,) in *Railroad Land Co. v. Courtright*, 21 Wall. 310, 316,—

"The act of the state of July 14, 1856, was also a grant *in præsenti* to the first railroad company, to take the title and interest of the state upon the terms, conditions, and restrictions expressed in the act of congress. The further conditions as to the completion of the road imposed by the state were conditions subsequent, and not conditions precedent as contended by the defendants. The terms in which the right is reserved by the act of the state to resume the lands granted *imply*—what the previous language of the act *declares*—that a present grant was made, and not one dependent upon conditions to be previously performed."

The state grants in the case cited and in this case differ from that considered in *Schulenberg v. Harriman*, 21 Wall. 44, for in that case the words of present grant by the state were restrained and qualified by subsequent provisions as to vesting of title, so that this court said, (p. 59:)

"It is evident, notwithstanding the words of transfer to the company contained in the first part of the 19th section of the act of the state, that it was not the intention of the state that title should pass except upon the construction of the road."

The distinction between this grant and that is the same which separates the congressional grant considered in *Rice v. Railroad Co.*, 1 Black. 358, 377-9,

from those considered in the long line of cases we have cited. In this case there is nowhere in the act any qualification of the grant made by the state to the company in the second section.

The provisions in the act of congress of May 12, 1864, do not, when read with the rest of the act, preclude such a transfer as was made by the state to the company.

The provisions in the act making the time fixed for construction begin to run from the acceptance of the grant by the companies; that on completion of any ten-mile section, the secretary of the interior shall issue patents "for the benefit of the road," i.e., the company, "having completed the ten consecutive miles as aforesaid;" that if the roads are not completed in ten years "the said land hereby granted shall revert to the state of Iowa," and that, in a certain contingency, "the state may resume its grant" to the McGregor Western Co.—all these show that congress contemplated and authorized the making by the state of such a grant as it made,—a transfer of the whole grant, subject to the provisions of the act of congress.

Such has been the uniform holding of this court, even where the acts of congress, while containing all the restraints on alienation found in that of May 12, 1864, did not contain provisions like those just quoted.

In *Grinnell* v. *Railroad Co.*, 103 U.S. 739, the grant (to Iowa) was transferred to the company before location. And it was held (p. 742) that "the title or at least the right to this land vested in the state, or in the company to which the state had granted it," (a passage quoted approvingly in *Cedar Rapids, etc.*,

R. Co. v. *Herring*, 110 U. S. 27, 38;) and the railroad company having mortgaged its road before construction, and having thereafter built part of it, and the mortgage having been foreclosed, and the property sold under the decree to the Rock Island Co., the court holds (p. 743) that "the entire legal title, therefore, to their land had passed, for valuable consideration, to this company."

In *Cedar Rapids, etc., R. Co.* v. *Herring*, 110 U. S. 27, the court say (p. 29:) "The state of Iowa * * granted and conferred upon four corporations all these lands, under the terms and restrictions of the act of congress."

In *St. Louis, etc., Ry. Co.* v. *McGee*, 115 U. S. 469, 476, the state transferred the grant to a railway company, and the company conveyed a parcel to a purchaser—all before construction. A subsequent patent to the state, after construction, was held to enure to the benefit of the company's grantee.

In *St. Paul & Sioux City Co.* v. *Winona & St. Peter R. Co.*, 112 U. S. 720, and in *Barney* v. *Winona & St. Peter R. Co.*, 117 U. S. 228, the court recognizes the validity and sufficiency of a title based on a transfer of the grant by the state to the Transit Railroad Co., a mortgage by that company to secure a loan of state credit, a foreclosure of the mortgage, whereby the state became reinvested with its original estate, and a grant of the lands to the Winona & St. Peter R. Co.,—all before construction.

In *Wisconsin Central R. Co.* v. *Price County*, 133 U. S. 496, the state transferred the grant before location. The company built three of the sections, on completion of which the coterminous lands should

have been, but were not, patented by the United States to the state. The 11 forty-acre tracts in question were place lands lying alongside of the completed sections. The court says (pp. 510–1:)

"It" (the company) "had then to the 11 forty-acre parcels which were capable of identification an indefeasible right or title—it matters not which term be used," * * * "The lands had become the property of the railroad company, and there was nothing to hinder their use and enjoyment. For this purpose it is immaterial whether it be held that the company then had a legal and indefeasible title to the lands, or merely an equitable title to them, to be subsequently perfected by patents from the government."

In *Tucker* v. *Ferguson*, 22 Wall. 527, the lands granted to Michigan by act of congress of June 3, 1856, (11 Stat. 21,) were by the state granted to a railroad company before location of the line. And the court holds (p. 573,) that—

"When the grant was made by the state to the company the entire title before held by the former passed to the latter. Nothing remained to the state but the performance of the remaining duties of the trust, without any title, present or potential, to the lands."

It seems very clear from these authorities that on location of the line and selection of the indemnity lands, the defendant company, by virtue of the congressional and state grants, became invested with the full legal title to all the place and indemnity lands embraced in the grant, subject, of course, to the trusts, restrictions and conditions imposed in the act of congress. But if the legal title remained in the state, still the company had the full equitable title, a title defeasible only by force of the condition subsequent in the grant.

Having this equitable title, it was entitled, on completion of each ten-mile section of road, to have patents issue for its benefit in accordance with the act of congress. And its right in this respect is the same, whether it have both the legal and the equitable or only the equitable title.

SECOND.

THE DEFENDANT COMPLETED 50 CONTINUOUS MILES OF ITS ROAD IN FIVE TEN-MILE SECTIONS, AND THE GOVERNOR OF THE STATE CERTIFIED THERETO, ALL IN CONFORMITY WITH THE ACT OF CONGRESS OF MAY 12, 1864.

THEREUPON THE DEFENDANT BECAME ENTITLED TO HAVE PATENTS ISSUE FOR ITS BENEFIT FOR 500 SECTIONS OR 320,000 ACRES OF THE GRANTED LANDS. AND THE LANDS HERE IN SUIT, AND ENOUGH OTHER LANDS TO MAKE 320,000 ACRES, WERE PROPERLY PATENTED TO THE STATE FOR THE DEFENDANT'S USE, OUT OF THE 328,474.80 ACRES WHICH PASSED UNDER THE GRANT.

Whether, by reason of additional construction, the defendant is also entitled to hold under patents other lands besides the 500 sections is a question not involved here.

I.

The defendant completed five ten-mile sections of the road in conformity with the act of congress.

It is charged in the bill (Record, 4, par. 13,) and is admitted (Record, 51, par. 10,) that the terminus of the definitely located line on the Minnesota boundary was fixed, not by the state of Iowa directly, but by the defendant company, under express legislative authority. Should it be claimed that this rendered the location invalid, it is enough to say that its validity, as against this objection, is expressly admitted and asserted in the bill, (Record,

4, par. 12,) even if such a point needed any answer at all.

It is charged as a defect in defendant's right to have any lands whatever patented—

1. That it began the construction of its road at the Minnesota line and not at Sioux City. (Record, 5, par. 15.)

But the act nowhere requires construction to begin at one end of the line rather than at the other, nor indeed at either end. It may begin anywhere, and the secretary is required to issue patents on the completion of *any* ten-mile section, wherever situated. *State of Kansas v. Southern Kansas Ry. Co.*, 24 Fed. Rep. 179, per Brewer, J.

A somewhat similar point was made, and by this court overruled, in *Railroad Land Co. v. Courtright*, 21 Wall. 310, 315-6.

2. That the road was not built wholly on the located line.

But it was accepted by the secretary of the interior as built sufficiently near the line of location to be in legal contemplation built on that line. Such acceptance is a determination that the departures from the located line were necessary or at least justifiable, and that determination is not subject to review 15 years afterward. Such was the opinion of Secretary Lamar. (Record, 170; Ex. 21.) The constructed line is at all points within the place limits of the grant, and the case is within *Van Wyck v. Knevals*, 106 U. S. 360, 369,—even if the governor's certificate is not conclusive (in the absence of fraud) that each completed ten-mile section was a section of the line as located. *United States v. California, etc., Land*

Co., 148 U. S. 31, 43. The change at the Minnesota line so as to connect with the land-grant line from that point to St. Paul, mentioned in the 7th section of the act of May 12, 1864, was necessary and commendable, and in full accord with the evident purpose of congress.

And these same points were made against defendant in the suit by the Milwaukee Co., and were necessarily overruled in the decision of this court. See par. XVIII, *supra*.

3. That the road was not completed to Sioux City.

But patents were to issue on completion of each ten-mile section, however far from Sioux City. If afterwards the road was not built to Sioux City, this was matter for forfeiture of lands not patented. This point will be further discussed *infra*.

4. That by reason of these matters, the United States have been deprived of various benefits reserved to "it." (Record, 4–5.)

But the United States have got all they are entitled to and all they bargained for, for the lands patented, They have got $6^{18}/_{100}$ miles of road north of Le Mars and something over a mile in Sioux City, without patenting any lands therefor. In our statement *supra*, par. XI and XII, we have shown that by beginning to build at the Minnesota line and building to Le Mars to a connection with a land-grant road from that point to Sioux City, over which defendant obtained right to run its trains, and over which they have always been run to Sioux City, the defendant furnished to the United States every advantage they could have received had defendant built

to Sioux City, without the disadvantages necessarily resulting from two parallel lines in such close proximity. This court has more than once made the intention of congress to avoid the building of unnecessary parallel roads, one of the criteria of construction of land grants. *Cedar Rapids, etc., R. Co. v. Herring*, 110 U. S. 27, 30; *Kansas City, etc., R. Co. v. Attorney General*, 118 U. S. 682, 690.

5. All these things on the part of the company are, in paragraph 23 of the bill, (Record, 9,) charged to have been done "fraudulently" and "with intent to cheat and defraud" the United States. No attempt was made to prove these charges of fraud, and this part of the bill stands as mere wanton vituperation. Though such pleading is no longer a ground for defeating a claim otherwise well founded in equity, (the cases of *Eyre v. Potter*, 15 How. 42, 56; *Wilde v. Gibson*, 1 H. L. 605, 627; *Tillinghast v. Champlin*, 4 R. I. 173, having been in effect overruled in *Wasatch Mining Co. v. Crescent Mining Co.*, 148 U. S. 293, 297-8,) it is not the less ~~unbecoming in~~ unworthy of the highest law officer of the United States to make the proceedings "instruments of unfounded slander," (in the words of Lord Cottenham in *Wilde v. Gibson, supra*,) directed at reputable citizens of the United States. The charges of fraud are an inheritance of the present attorney-general from his predecessor, and we can not believe they will be insisted on. Whether insisted on or not, they deserve no farther comment.

II.

Having thus completed the 50 miles, the defendant was entitled to patents for 500 sections of land.

1. On this point the language of the fourth section of the act admits of but one possible construction:

"That *the lands hereby granted* shall be disposed of by the state for the purpose aforesaid only and in manner following, namely: When the governor of said state shall certify to the secretary of the interior that *any* section of ten consecutive miles of either of said roads is completed in a good, substantial and workmanlike manner as a first-class railroad, the secretary of the interior *shall* issue to the state patents for *one hundred sections* of land for the benefit of the road having completed the ten consecutive miles as aforesaid."

And so on as the completion of additional ten-mile sections is certified to, "until said roads or either of them are completed, when the whole of the lands *hereby granted* shall be patented to the state for the uses aforesaid and none other."

The words "hereby granted," as used in this section, include both place and indemnity lands. Otherwise there would be no restriction on the disposal of the latter, no provision for patenting them, even on completion of the whole road, and no provision for forfeiting them on failure to complete the road.

It seems too plain to admit of argument that the act makes no distinction whatever between one ten-mile section and another in respect of the quantity of lands to be patented on completion of it. The act does not prescribe one quantity for a ten-mile section lying outside the area of any conflict with another land-grant road, and a different quantity for a ten-mile section lying wholly or in part within

that area. It does not prescribe one quantity where 100 full sections of the granted lands can be found *in place* along the ten-mile section of completed road, and a less quantity where only a less quantity can be found in those limits. Nor does it prescribe different quantities for different sections according to the greater or less quantity of lands enuring to the grant in the *indemnity* limits, or in both the place and indemnity limits, alongside such completed section. Nor does it make the quantity of lands to be patented on completion of any ten-mile section to depend in any way on the total quantity of land contained in the odd sections in the place limits of the grant, (whether enuring to the grant or not) lying alongside such completed section.

And certainly it does not say that 100 sections shall be patented for any ten-mile section only in case the quantity of land actually enuring to the grant along the whole line shall be equal to 10 sections for each and every mile of the entire line.

To illustrate: Had building begun at Sioux City, there would have been found alongside the two first of the ten-mile sections very few, if any, lands enuring to the grant. But the act positively requires that on completion, properly certified, of each of those sections, the secretary shall issue patents for 100 sections of land.

Of course the lands would have to be taken along some other part of the line. They might be taken outside the area of any conflict. Or it might be that along all the rest of the road the grant conflicted with another contemporaneous grant, so that the lands to be patented must be taken in this area of conflict. But in either case 100 ~~acres~~ sections are to be

patented, and the quantity, for the ten miles of road lying *outside* the conflicting area is not to be reduced because of a conflict, and consequent reduction of the quantity enuring to the grant, in the area from which the lands to be patented must be taken.

And the case must be the same when the ten miles of completed road for which 100 sections are required to be patented lie *within* the area of conflict with a contemporaneous grant for another road. Of course the quantity enuring to the grant along such section is reduced one-half by the conflict, just as the quantity enuring to the grant alongside the two ten-mile sections nearest Sioux City would be reduced to nothing by reason of the earlier conflicting grant. But in each case the company is entitled to have 100 sections of land patented on completion of the ten-mile section of road, wholly irrespective of the condition of the grant, or the quantity of lands within the grant, alongside of such ten-mile section.

2. *What* lands are to be patented for any ten-mile section?

The act nowhere directs what among the granted lands shall be patented, nor even within what limits they are to be taken. They need not be in a body, nor, as already pointed out, need they lie alongside such completed section, nor along any other ten-mile section, whether built or not.

The only condition imposed by the act is that they must be lands "hereby granted,"—lands the title to which has already vested on location or selection—that is, must be part of the 328,474.80 acres, lying along the whole located line, which enured to the grant, became "lands hereby granted," on definite

location (as to the place lands) and on selection and approval (as to the indemnity lands,) and upon which the first section of the act operated as if they were specifically described in it.

These lands "hereby granted" may be variously distributed. Along one ten-mile section, there might be ten sections in place and no indemnity lands; along another no sections in place and ten sections enuring to the grant in the indemnity limits; along another, five sections in place, five sections in the indemnity limits selected to supply the five sections in place that had been lost, and also five sections in the indemnity limits selected to make up deficiencies in the place limits elsewhere on the line. All these lands are lands "hereby granted," and the act does not require the secretary to patent one class rather than another on completion of any ten-mile section.

This feature of the law might possibly embarass the company should the secretary refuse to issue patents for it and dispose of the land to others; but no such difficulty arises here, the lands have been patented; and *if the defendant is entitled to 100 sections for each ten miles, we do not understand it to be questioned that the particular lands described in the bill were properly patented.*

It follows that the defendant was entitled to have patented, immediately on the completion of the five ten-mile sections, the 21,979.85 acres of the patented lands described in the bill, in addition to the 280,725.29 acres of the patented lands that have been conveyed to it by the state.

THIRD.

DEFENDANT'S TITLE TO THE 320,000 ACRES REQUIRED TO BE PATENTED AND IN FACT PATENTED UPON THE COMPLETION AND CERTIFICATION OF THE FIVE TEN-MILE SECTIONS, CANNOT BE DEFEATED OR IMPAIRED BY ITS FAILURE TO COMPLETE THE ENTIRE ROAD.

It seems to be conceded on all hands that if the defendant, having obtained patents for 320,000 acres, had gone on and completed the road, it would be entitled to hold the patented lands against any claim of the United States. That is, the defendant's title, if defeasible, is defeasible and should be defeated because it has failed to complete the whole road.

But this is to impose a forfeiture which the act does not permit.

By the terms of the act it is only the lands, already granted, indeed, and the title vested, but not yet freed from restrictions and conditions by construction of road,—only "the lands hereby granted, and not patented,"—that are subject to forfeiture for failure to complete the whole road

And here again the act means just what it says. Upon the issue of patents the lands patented were freed from restraints on alienation, and from conditions subsequent, and from liability to forfeiture.

Bybee v. Oregon & Cal. R. Co., 139 U. S. 663, 674, 676-7.

And such is the effect uniformly given to a patent issued under like provisions in a grant.

In *Van Wyck v. Knevals*, 106 U. S. 360, it was objected that the company was not entitled to its

lands, some of which had been patented and others earned but not patented, because of its failure to complete its entire line. The court say, (p. 368:)

"The fact remains that the company constructed a portion of the proposed road, and that portion was accepted as completed in the manner required by the act of congress. Patents for some of the adjoining sections were accordingly issued to the company, and a right to all of them, not specially reserved by the condition of the grant, vested in it. So far as that portion of the road which was completed and accepted is concerned, the contract of the company was executed, and, as to the lands patented, the transaction on the part of the government was closed, and the title of the company perfected."

And see *State of Kansas v. Southern Kansas Ry. Co.*, 24 Fed. Rep. 179.

In *Wisconsin Central R. Co. v. Price County*, 133 U. S. 496, the grant to Wisconsin provided that on the completion of each twenty-mile section of road, patents should issue for the lands coterminous with such completed section, "not exceeding the amount aforesaid"—i. e., ten sections per mile.

The company completed three ten-mile sections and applied for patents, which the secretary refused to issue. The state, however, executed conveyances to the company, and taxed the lands. This court held the place lands taxable, but that the indemnity lands were not, because the secretary had not approved the selections, and so the grant had not attached to them. As to the lands in the place limits, the court, speaking of the company's title, on construction of its road past them, says, (p. 510:)

"It had then, to the 11 forty-acre parcels which were capable of identification, an indefeasible right or title—

it matters not which term be used." And the court defines the operation of the patent, that it is not necessary to the passing of title, but is evidence that the lands were within the grant, and that the company had performed the conditions, and that the grant was thereby relieved of liability to forfeiture for breach of them.

In *Deseret Land Co. v. Tarpey*, 142 U. S. 241, the court quotes with approval (p. 251,) the observations made in the last cited case as to the effect of a patent, holds (p. 252,) that it was effectual "to cut off the right of the United States to compel the application of the lands to the purposes for which they were granted, or to prevent their forfeiture in case of the company's failure to perform the conditions of the grant."

And see

St. Paul & Pacific R. Co. v. Northern Pacific R. Co., 139 U. S. 1, 6.

Curtner v. United States, 149 U. S. 662, 675.

And nowhere are this rule and the reasons for it better stated than in *Denny v. Dodson*, 32 Fed. Rep. 899, 901-4.

The lands freed from conditions having been identified by the designation of them in the patents, the title of the defendant, under the act of congress and the patent, is, as against the United States, as complete and of as high a nature as can be that of any holder of a patent from the United States. The patents cannot be recalled or defeated merely because the defendant did not complete the entire road.

FOURTH.

THE CIRCUMSTANCE THAT BUT 328,474.80 ACRES PASSED BY THE GRANT FOR THE ENTIRE 83⅛ MILES OF THE ROAD AS LOCATED, (AN AVERAGE OF BUT 6⅛ SECTIONS PER MILE,) AFFORDS NO GROUND FOR HOLDING THAT ON COMPLETION AND CERTIFICATION OF EACH TEN-MILE SECTION OF ROAD, THE DEFENDANT WAS ENTITLED TO HAVE PATENTED ONLY 61⅔ SECTIONS OR ANY LESS QUANTITY THAN 100 SECTIONS OF THE GRANTED LANDS AS REQUIRED BY THE ACT OF CONGRESS.

THE CIRCUIT COURT, THEREFORE, ERRED IN HOLDING THAT FOR THE 50 MILES OF ROAD CONSTRUCTED THE DEFENDANT CAN HOLD, AND WAS ENTITLED TO HAVE PATENTED, OF THE LANDS GRANTED, NOT 320,000 ACRES, BUT MERELY A QUANTITY OF LAND BEARING SUCH PROPORTION TO THE QUANTITY ALONG THE ENTIRE LINE AVAILABLE TO FILL THE GRANT AS THE NUMBER OF MILES OF CONSTRUCTED ROAD BEARS TO THE NUMBER OF MILES IN THE ENTIRE ROAD.

The position we attack and the argument defending it, could not be stated more clearly or more forcibly than was done by the learned judge who decided the case in the circuit court.

Judge Shiras says:

"Can there be any doubt of the purpose which congress had in view when it passed the act making the grant in question? Was not such purpose to secure the construction of a line of railway from Sioux City to the Minnesota State line? This is the purpose declared upon the face of the act, as well as the one which all the other circumstances clearly indicate.

"To accomplish this purpose congress was willing to grant all the public lands not otherwise disposed

of found within the alternate sections designated by odd numbers within ten miles of the located line of railway, with the right to select from within a limit of twenty miles, from the odd-numbered sections, such quantity, if the same would be found not otherwise disposed of, as should equal the number of acres falling within the ten-mile limits excepted from the grant by reason of having been sold or otherwise disposed of by the United States. There is no guaranty by the United States that the quantity of land covered by the grant should equal any fixed number of acres either for the construction of the entire road or any portion thereof. The extent of the grant and the limitations thereto are fixed by the terms of the act, but there is no attempt to state the number of acres that the grant would in fact cover, and the exceptions named in the act clearly show that it was expected that the company undertaking the construction of the line of proposed railway must be content with whatever quantity of land it was ultimately found was covered by the grant and in fact conveyed by it.

"This quantity of lands, whatever the number of acres, the United States granted for the purpose of securing the building of a line of railway from Sioux City to the Minnesota State line, and the defendant company when it accepted the grant undertook to build that line and not merely a part of it. To entitle the company to the entire quantity of lands covered by the grant, whether more or less, it was required to build the entire line of road named.

"Part-performance on its part would not entitle it to demand entire performance on the part of the United States.

"The company, having failed to build the entire line, could not equitably demand payment of more than the number of miles actually constructed, and this much the United States is willing to concede the company may demand.

"The fact that in the third paragraph of the act of congress it is provided that upon the completion of each section of ten miles the secretary of the interior should issue to the State of Iowa patents

for one hundred sections of land for the benefit of the company, cannot, when read in connection with the other sections of the act, be construed to mean that by the building of ten miles the company absolutely earned the hundred sections.

"The work as contracted to be done was an entirety, to-wit, the line from Sioux City to the southern boundary of Minnesota, and the compensation to be paid by the United States was the total number of acres of land covered by the grant; and the provisions of paragraph 3 only fix the time for partial payments to be made, and are not intended to change the clear meaning of the granting clause of the act.

"It must therefore be held that the company is entitled to such portion of the lands actually covered by the grant as the number of miles of road actually constructed bears to the total length of the located line from Sioux City to the southern boundary of Minnesota."

(1.) The court was right so far as it held that the grant was for the whole road, in the sense that no part of it was appropriated for any specific section of road, and any part of it was subject to be patented on completion of any ten-mile section.

But the court does not seem to recognize that the grant was *in præsenti*, and that title to all the 328,474.80 acres embraced in it passed on location and selection, and that the 4th section, while in no way modifying the grant made by the first, imposed restrictions and conditions subsequent on all the lands already granted, and provided that a specific quantity—100 sections—of the lands *already granted* should be freed from such restrictions and conditions subsequent, on completion of each ten-mile section.

It seems to be implied in the opinion of the court, that the act makes not a grant but only a promise —a promise to grant all the described lands on com-

pletion of the entire road. But whether he regards the act as making a promise or a grant, the learned judge holds that such grant or promise is upon condition of building *the whole road*, and the performance of this condition is the consideration of the promise. The condition is thus made precedent and not subsequent to the vesting of title, and the promise (or conditional grant) and the condition are each single and entire. The grant is an entire grant of all the lands, and it is upon a single, entire consideration, the building of the whole road. Though the act provides for patenting lands before full completion, yet this is in the nature of payment of instalments of an entire contract price before the completion of the entire work contracted for. The court says:

"The work contracted to be done was an entirety, to-wit, the line from Sioux City to the southern boundary of Minnesota; and the compensation to be paid by the United States was the total number of acres of land covered by the grant; and the provisions of paragraph 3 only fix the time for partial payments to be made, and are not intended to change the clear meaning of the granting clause of the act."

But on such construction of the act, if the company failed to perform the entire condition, to furnish the entire consideration, by building the whole line, it could not retain even the instalments of the price which it might have received. *Adams v. Nichols*, 19 Pick. 275; *School Trustees v. Bennett*, 27 N. J. Law, (3 Dutcher,) 313; *Dermott v. Jones*, 2 Wall. 1. The learned judge was unwilling to follow his construction of the act to this its logical result, and at the same time he was equally unwilling to admit a

construction by which the company might have patented, and thus acquire indefeasible title to, 320,000 acres of the granted lands, on completion of 50 miles, and the whole 328,474.80 acres on completion of 60 miles of the 83⅛ miles comprised in the located line. Both of these constructions were repugnant to his sense of equity. He says:

"To entitle the company to the entire quantity of lands covered by the grant, whether more or less, it was required to build the entire line of road named. Part-performance on its part would not entitle it to demand entire performance on the part of the United States. The company, having failed to build the entire line, could not equitably demand payment of more than the number of miles actually constructed, and this much the United States is willing to concede the company may demand."

And he further says that the provision in the 4th section for issuing patents,—

"Cannot, when read in connection with the other sections of the act, be construed to mean that, by the building of ten miles, the company absolutely earned the 100 sections."

And, while denying that the company absolutely earned 100 sections, he holds that it did "absolutely earn" a less quantity, which we have shown to be 61⅛ sections. The conclusion is thus stated:

"It must therefore be held that the company is entitled to such portion of the lands actually covered by the grant as the number of miles of road actually constructed bears to the total length of the located line from Sioux City to the southern boundary of Minnesota."

The learned judge thus attempted a *via media*, holding that the contract was so far lacking in the entireness he had at first attributed to it that the

company, though failing to build the whole road, might yet be entitled to some of the lands; that it might retain the lands that had been patented, not, however, to the extent of 100 sections for each ten miles of finished road as provided in the act and patented in accordance with it, but only to the extent of the proportionate quantity indicated in the opinion. The result is that while the company cannot retain the 100 sections patented on completion of each ten miles of road, in can retain 61⅜ of them.

(2.) It hardly needs argument to show the wide divergence of the court's construction of the act from the construction settled by the decisions of this court, and set forth in our three first points. No such contract as that assumed by the court can be found in the act. By the terms of the 4th section, the company is entitled to have patented and hold by indefeasible title 100 sections of the granted lands on the certified completion of each ten-mile section, or it is not entitled to an acre, the road not having been completed. The United States can reclaim the whole 100 sections or they can reclaim no part of them. There is no middle ground. The *via media* is impossible.

Congress might doubtless have made a grant in the proportionate terms adopted by the circuit court; or it might have made, not a present grant, but merely the promise of a grant; or, making such a present grant as it did make, it might have provided that on failure to complete the road in a fixed time, *all* the granted lands should be subject to forfeiture; or that so many of them should be subject to forfeiture as would reduce the whole

quantity granted to the proportionate amount suggested by the court, or to such other proportionate amount, or to such definite amount—say, five sections or two sections—per mile as it should see fit. And if any company could be found to accept such a grant, it would be bound by its terms. But if congress had meant to make such a grant, or to impose such conditions—so unprecedented in land-grant legislation—it would at least have used language from which that intention could be spelled out. The language of this act will bear no such construction.

The act makes a present executed grant in the first section. In the fourth section are restrictions on disposal and a condition imposing liability to forfeiture. This section contains a promise by the United States to release 100 sections of the granted land from restrictions and conditions on the completion of each ten-mile section of road, and to evidence such release by the issue of patents. The company, on performing the condition of this promise by building each of the five ten-mile sections, has performed its part of this contract, and has become legally and equitably entitled to performance on the part of the United States. As to such sections of road and such lands, "the contract of the company was executed," (*Van Wyck v. Knevals*, 106 U. S. 360, 368, quoted *supra;*) and when such lands have thereupon been patented, then "as to the patented lands the transaction on the part of the government was complete, and the title of the company perfected." *Id.* And even before the issue of patents, the company, having performed the condition, "had an indefeasible right or title—it matters not which

term be used." *Wisconsin Central R. Co. v. Price County*, 133 U. S. 496, 510, quoted *supra*.

"An indefeasible right or title"—to what? To a patent for some unknown and indefinite and unascertainable quantity of land? for it might well be, it often has been—it was the fact in the case last cited—that some sections of the road were built before the total quantity enuring to the grant was ascertained, the selections of indemnity lands not having been approved.

Or is this "indefeasible right or title" a right and title to the 100 sections which the act says shall be patented, and which have been identified and patented? But what sort of "indefeasible right or title" would the company have to any parcel of the specific lands described in a patent, if a proportionate reduction from the quantity patented could be made on the subsequent discovery—perhaps a year, perhaps ten years after the issue of the patent—that the total quantity of lands enuring to the grant was less than had been supposed?

(3.) The proportional mileage contract which the circuit court has substituted for that clearly expressed in the act of congress is wanting in the equity attributed to it by the court. It is a purely arbitrary basis for apportioning the lands. If applicable to this grant, it applies to all, and applies where the lands to be patented from time to time during construction are to be coterminous with completed sections of road. But one ten-mile section may differ from another both in its value to the United States and in its cost to the company, and the lands along one may be of very different value from the lands

along another. One ten-mile section may be among mountains, the lands worthless; it may include a bridge or a tunnel costing more than the construction of 50 miles of the road built at small expense through a land flowing with milk and honey. One company may proceed at once with the construction of its road, the United States getting an immediate benefit in the use of the completed sections by themselves and by the people. Another delays construction for years, until the cost of building has been much reduced, while the lands have risen greatly in value. Why should the company which has thus lain idle, watching the growth of the unearned increment, and has come in at the eleventh hour, reap far more profit from its grant than the company which has been prompt and zealous and has borne the burden and heat of the day? And if land grants are to be reformed by the courts so as to be conformable with equity, why should not all these considerations and others that a little reflection will suggest, be given place, not only in apportioning the quantity to be patented on completion of separate sections of the road, but in determining the total quantity of lands the company shall be allowed to hold on final adjustment of the grant after completion of the whole road?

If this or any other land grant is to be construed, not according to its terms, but so as to make it conform to a court's opinion of what would have been an equitable contract for the parties to make, it will be readily seen upon what a wide field of investigation the court must enter, and with what danger of going astray.

(4.) And in this case the nature of the contract, the character of the parties, and the circumstances in which it was made afford no excuse for disregarding or varying its terms. This is not an isolated grant. It is one of many, forming a system initiated by men who were at once statesmen and lawyers, and matured and perfected year by year by the labors of successive secretaries of the interior and committees on public lands. It is idle to suppose that congress was not perfectly aware in the case of this and many other grants, that, in the event of the grant falling short of ten sections per mile for the entire length of the line, the company might have patented to it all the lands upon building less than all the road. In such case the inducement of the company to complete the road would be to give an earning capacity to the part already built. And the United States would have to rely for completion of the road on the company's interest in its completion. As the court says, the company took the risk of the grant falling short of ten sections per mile for the whole road. But the act does not cast all the risk on the company. The United States took the risk of the lands being all patented for completion of the road, and of the company's failing to go on to complete it after the lands should all have been patented. In most cases the fact that a railroad has been built for two-thirds of the distance between its termini affords a strong guaranty that it will be completed. In most cases such completion would be necessary to give earning capacity to the part already built, and enhance if not create a value for the granted lands. In the case of this very road, the company's own interest would have insured construction to

Sioux City, were it not for the fact that every interest of the company, as well as every interest of the United States and of the inhabitants of the country between Le Mars and Sioux City, that would in any case have been served by building to Sioux City, was already provided for by the road for which congress had made an earlier grant and which had been located and built from Le Mars to Sioux City, a road whose value would be seriously impaired by building an additional line—a line not needed and which must necessarily be unprofitable between those points.

And had this 4th section been in the terms of the like section in every land-grant act prior to 1863, then, upon a located line of 80 miles, every acre of the lands, even if the grant were full so that 800 sections passed under it, could have been absolutely disposed of by the state and company, on completion of but 60 miles of the road. Railroad Land Co. v. Courtright, 21 Wall. 310. And see the acts cited infra under our fifth point, par. IX.

(5.) Congress must be presumed to have had some knowledge of the region of country for which it was legislating; of its former grants to Iowa; that the line of one of those grants had already been located between the point which has since become Le Mars and Sioux City; that even if such line should never be built, still no lands—or almost none—between Le Mars and Sioux City could pass under the grant it was making in the act of May 12, 1864. It was making by the same act a conflicting grant to the McGregor Western Co. of a large part of the same lands granted for defendant's

line; and it knew (for this court has held that such was its intention) that should both lines be located, the defendant's line would get but one-half of the land in the area of the conflict. It must have anticipated that the lands that would pass under the grant would fall short—far short—of the quantity in terms granted, and that if the grantee should begin building at the connection with the Minnesota line, and have patented to it 100 sections for each ten miles as construction proceeded, the lands granted would be substantially exhausted before the road should reach the line of the earlier grant at what is now Le Mars; and that, in such case, the grantee would build to Sioux City only in case it should be for its interest to do so without receiving additional land.

With this knowledge congress made this grant, prescribing an intersection of the two lines in the county of O'Brien; leaving it optional with the defendant company to begin construction at the point of connection with the Minnesota railroad described in the 7th section of the act; providing that patents for 100 sections of land should be issued on completion of each ten miles; placing no restriction—coterminous or otherwise—on the locality where the lands should be taken, so that it might happen that not only all the lands from the state line to a point 50 miles south of it (where the limits of the earlier grant would be reached) but also the few lands between that point and Sioux City, might all be patented to the company, free from restraints on alienation or liability to forfeiture, on completion of the road to Le Mars or even on completion only to a point north of Le Mars. Should the lands be

exhausted before Le Mars was reached, the interest of the company would (as it did) insure its completion to that point. And should the road stop there, still the United States would have given but ten sections (the normal quantity) of land for each mile of completed road, and they would have secured, by means of the earlier grant, as complete railway service as if defendant's line had been built to Sioux City, and thus the main purpose of the grant would be (as it has been) accomplished.

And is it for a court to say that a contract thus made by congress with such knowledge and under such circumstances and with such results, is so grossly unfair to the United States that its plain terms must be disregarded, and different provisions, more consonant with the court's idea of what would have been an equitable contract, be put in their place?

(6.) And looking at the other party to the contract, is it at all likely that any company would have undertaken the construction of this road, had it understood that the act did not mean what it said; that when it said that, of the lands granted, 100 sections should be patented and thus held by indefeasible title, it meant nothing of the kind, but meant merely that, of the lands so patented, the company should hold only so many as a court nearly thirty years afterward might think would have been a proper quantity for congress, in 1864, to allow the company to have patented for it on completion of ten-mile sections.

(7.) The rule adopted by the circuit court is as applicable to all other land-grants as to this and is equally applicable whether (as in most of the grants since 1864) the lands patented are to be coterminous with the completed sections, or whether, as in most of the earlier grants, no such restriction is placed on the lands which the state is authorized to sell, or for which patents are to issue, on completion of twenty-mile or ten-mile sections of road.

It is the fact, and this court has taken notice of it in *St. Paul & Sioux City R. Co. v. Winona & St. Peter R. Co.*, 112 U. S. 720, 732, that "it may be a long time after the line of the road is located before it is ascertained how many sections or parts of sections within the primary limits have been lost by sale or pre-emption. It may be still longer before a selection is made to supply this loss." But until this is done, the total quantity contained in the grant, and the proportion for each mile, cannot be ascertained.

Indeed this cannot be determined until a final adjustment of the grant is made by the interior department. How many years may elapse before this is accomplished appears from the fact that the act of March 3, 1887, under which this suit was brought, required the secretary to proceed to the adjustment, and that in 1887 the secretary was engaged in adjusting this very grant, though the line was definitely located in 1867 and all the indemnity lands selected in 1869, and the construction ended in 1872.

And twenty-mile sections may be completed and certified before the whole line is located. This was the case with the Northern Pacific Railroad Co., which

built 200 miles of its line in Minnesota before the entire line was located. *St. Paul & Pacific R. Co. v. Northern Pacific R. Co.*, 139 U. S. 1, 8. A vast territory traversed by that line is still unsurveyed. It cannot even yet be determined how many acres will enure to the grant, and of course it cannot be told how many acres there will be for each mile of road.

Under the rule erroneously adopted and long adhered to by the interior department, that a definite location of a land-grant railroad could not be made through unsurveyed lands, it might happen (it did happen in the case of the Minnesota roads named in the act of March 3, 1857, and among them the line from Stillwater via St. Paul to Breckenridge considered in *St. Paul M. & M. Ry. Co. v. Phelps*, 137 U. S. 528, 531,) that several sections of the road would be completed even before the definite location of more than one-half the line, and when it was an absolute impossibility to determine what lands or what quantity of land would be found within the grant.

Yet in all cases, on completion of 20-mile sections (in the earlier grants) or 10-mile sections (in most of the subsequent grants,) a specified quantity of land "may be sold" (in the earlier grants,) or patents for a specified quantity shall issue, or for part or all of the coterminous lands, (in subsequent grants.) The purpose of the provision is, in each case, that money for building the road may be realized from sale of the land.

But if all these acts are to be subjected to the rule of the circuit court, then this result is inevitable. Either—

1. Since the company is entitled to have patented only a proportionate quantity of land, and since such proportionate quantity cannot be ascertained until, upon final adjustment of the grant, the total quantity of land enuring under it is determined, no patent can issue until the land grant is adjusted, perhaps years after completion of the section for which it is due. Or—

2. A patent is to be issued on the completion of each section of the road for the specific coterminous lands or for the quantity of land (coterminous or not) called for by the act. But this is merely provisional; no indefeasible title vests, since any of the lands may be reclaimed on failure to complete the road, if the quantity patented proves at any time in the future greater than the proportionate quantity allowed by the rule of the circuit court.

In each case the purpose of the section providing for patents is defeated, and in each the company is deprived of any benefit from them, and the provision is in effect nullified.

It is hardly worth while to abandon the plain meaning of the act, to experiment with constructions which lead to such results.

FIFTH.

In answer to the positions taken by the secretary of the interior in his decision and by the attorney-general in the bill of complaint, we say:

THE QUANTITY OF 100 SECTIONS REQUIRED TO BE PATENTED ON COMPLETION AND CERTIFICATION OF EACH TEN-MILE SECTION IS NOT TO BE REDUCED BY REASON OF ANY DEFICIENCY IN THE AREA OF THE ODD SECTIONS IN THE PLACE LIMITS ALONG SUCH COMPLETED SECTION, OR BY REASON OF ANY REDUCTION IN THE QUANTITY OF GRANTED LANDS LYING ALONGSIDE SUCH COMPLETED SECTION CAUSED BY CONFLICT WITH THE GRANT FOR THE McGREGOR WESTERN (NOW MILWAUKEE) ROAD.

HENCE THE QUESTION WHETHER DEFENDANT'S GRANT WAS OF EVERY ODD SECTION, OR OF ONLY ONE-HALF OF EVERY ODD SECTION IN THE CONFLICTING LIMITS, AND THE QUESTION OF DEFENDANT'S RIGHT TO INDEMNITY FOR LANDS IN THOSE LIMITS RECOVERED BY THE MILWAUKEE CO., AND THE QUESTION OF THE EXTENT OF ITS RIGHT TO INDEMNITY FOR LANDS IN THOSE LIMITS DISPOSED OF TO SETTLERS, DO NOT ARISE IN THIS CASE.

I.

The first of the foregoing propositions is covered by what we have said under our second point.

II.

The second is a necessary consequence of the first, unless the specific lands described in the bill were selected as indemnity for lands in the conflicting place limits awarded to the Milwaukee Co. or disposed of to settlers.

None of the lands in suit, none of the 328,474.80 acres enuring to the grant, were thus awarded or disposed of. The latter quantity is what remains to the grant after such award and disposition. And the decree in the suit between the two companies adjudged defendant to be the owner of all the lands described in the bill in this suit.

Of course none of the 15,281.09 acres of place lands described in the bill were selected as indemnity for anything.

And none of the 6,728.76 acres of indemnity lands described in the bill ~~was~~ were selected in lieu of place lands lost to the Milwaukee Co., for they were selected in 1869, years before any lands had been lost to that company. And all the odd sections in both place and indemnity limits along defendant's entire located line which had not been disposed of to settlers or under earlier grants, (including, of course, these lands,) were selected for defendant and were afterwards patented for defendant. (*Supra*, par. VIII, XVII; Record, 61, par. 52; p. 52, par. 13-16; p. 57, par. 41-3.) Hence no part of these 6,728.76 acres were selected—no lands at all could have been selected—to make up for losses that had not occurred.

III.

There remain the lands disposed of to settlers. The secretary places the total area of the odd sections in the conflicting place limits at 70,345.67 acres. (Record, 170.) The attorney-general, in the bill, puts it at 69,818.76 acres. For the purposes of this argument we may assume it to be 70,000 acres. Of these, there came under the grants to the two companies, and were involved in their suit, 50,536.72 acres. (*Supra*, XVIII; Record, 57, par. 41.) The residue, the lands disposed of to settlers, etc., and so not falling to either company, is 19,463.28 acres. For one-half of this quantity the plaintiffs must concede that defendant was entitled to indemnity, that is for 9731.64 acres.

Now, defendant can be deprived of these 6,728.76 acres of indemnity lands involved here, on the ground that is not entitled to indemnity for more than half the quantity of lands lost to settlers, only on allegation and proof (1) that it has received lands as indemnity for lands in the conflicting limits disposed of to settlers; (2) that the quantity so received by it is in excess of one-half the quantity so disposed of to settlers; and (3) that the lands in suit were taken as indemnity for lands so disposed of to settlers, and are part of such excess.

It is not enough that it appear that the defendant has received an excess of lands on this account; it must also appear that these are such excess lands. If the excess consists of other lands, or if it is not shown to include these lands, the plaintiffs cannot recover these lands. And the proof, to defeat a patent,

must be "clear, strong and satisfactory." *U. S. v. Des Moines, etc., Co.*, 142 U. S. 510, 541.

The bill contains no such averment, the record no such proof.

The United States, throughout their case, deal only with aggregate quantities—the aggregate quantity in the place and in the indemnity limits of the grant, the aggregate quantity in each of the limits patented to the state, and recovered by the Milwaukee Co. or relinquished by the state to the United States, or remaining for defendant, and (what is wholly immaterial) the aggregate quantity in place limits alongside the five completed ten-mile sections. They nowhere attempt to point out the specific lands which may have been patented in excess of defendant's right.

IV.

But taking plaintiffs' own method and it is entirely plain that defendant has not received any such excess.

A full grant of ten sections along the 83⅓ miles of defendant's located line would be 831⅓ sections or.....	532,266.00 acres
There being 70,000 acres in the conflicting place limits, then, if defendant's grant were only of one-half of every odd section, and it could have indemnity for such only as were lost from that half, its grant must be reduced by.....	35,000.00
Leaving it at.....	497,266.00 acres

There were in the place limits of defendant's whole line, exclusive of lands taken up by settlers (whether within or without the conflicting limits).....	212,067.86	
Deduct the lands enuring to the Milwaukee Co. in the place limits.....	25,268.36	
	186,789.50	
Leaving available to fill grant.....		186,799.50
Deficiency in place limits.....		310,466.50 acres
There were in the indemnity limits,		195,842.55
Deficiency in indemnity limits, even if defendant had got all the lands therein, and were not allowed any indemnity for losses in one-half the conflicting place lands....		114,623.95 acres

How then can it be said that any of the indemnity lands taken by plaintiff (none of which were selected for lands enuring to the Milwaukee Co. in the place limits) were selected on account of the 9,731.64 acres disposed of to settlers in the conflicting limits, and for which the plaintiffs say defendant ought not to have indemnity, when, without taking any indemnity for such lands, the whole quantity of indemnity lands is insufficient to make up defendant's concededly legitimate claims by..... 114,623.95 acres

But not all of the indemnity lands were available to defendant. Of them there went to the Milwaukee Co.....		54,165.55
Increasing the deficit to.....		168,789.50 acres

If defendant's grant be reduced by one-half the area of *all* the odd sections in the conflicting limits, and if it be allowed indemnity for losses only in one-half and none for losses in the other half of the lands in those limits, its indemnity lands are deficient by over 100,000 acres. If it has received indemnity for all or any part of the lands for which it is said not to be entitled to indemnity, the fact is not shown by any statement of total quantities, for such a statement disproves it.

It can only be shown, if it be a fact,—which we deny,—by pointing out just what specific lands were selected to make up just what specific losses occasioned by dispositions of land to settlers in the conflicting limits.

V.

The secretary and the attorney-general both seek to reduce the quantity that should be patented for the five ten-mile sections by deducting therefrom one-half of the area of the odd sections in the conflicting place limits.

The act provides that for the five ten-mile sections of completed road, 500 sections, or 320,000 acres of "the lands hereby granted"—i.e., of the 328,474.80 acres—shall be patented. Of course, if the lands "hereby granted" were less than 320,000 acres, the quantity to be patented must be reduced to the quantity contained in the grant, for no lands not "hereby granted" can be patented.

The secretary and attorney begin by reducing the quantity of granted lands in this wise. For the grant made by congress,—a grant for a located line of 83⅓ miles from the Minnesota line to Sioux City,

containing 328,474.80 acres, all alike subject to be patented upon construction of any ten miles of road—they substitute a grant for a line only 50 miles long, a grant for the five ten-mile sections of constructed road, terminating at the south end of such 50 miles. They then proceed to compute the quantity of lands passing under this grant, which of course, even if the whole of every odd section in the ten-mile limits between the termini were granted, could not exceed the total quantity of land contained in such odd sections.

The secretary, without ascertaining the actual area of the odd sections in the place limits, assumes it to be 320,000 acres.

The attorney-general professes to ascertain the quantity of land in the odd sections in the place limits along the 50 miles. But instead of resorting to the place limits laid down in 1867, and approved and acted on for 20 years, and ascertaining the quantity in the odd sections in *those* limits, he adopts the limits first devised by Mr. Sparks in 1887, and which are certainly not binding on the defendant, and the circuit court so held. (*Supra*, par. XXIII, XXIX; Record, 55, par. 31; pp. 256–7.)

He finds the quantity in the odd sections in *these* limits to be 314,346.54 acres. And this quantity he takes as the entire quantity embraced in the assumed grant for the 50 miles of constructed line, if every odd section (and not merely one-half of every odd section) in the conflicting place limits were granted. And if this quantity comprised all the lands granted, of course no greater quantity could be patented.

Both the secretary and the attorney-general then determine that the grant in the conflicting place

limits is of but one-half of every odd section. One-half the area of the odd sections in those limits must therefore be deducted from the area (as assumed or ascertained) of the odd sections in the place limits along the 50 miles, to find the actual quantity of land embraced in the grant for the 50 miles, which quantity must be the maximum that can be patented for construction of the whole 50 miles.

The secretary finds that one-half the quantity in conflict is 35,172.83 acres. He deducts this from 320,000 acres, leaving a remainder of 284,827.17 acres, or 4101.88 acres more than have been conveyed to defendant out of the patented lands. And on his computation, the defendant is entitled to 4101.88 acres of the lands described in the bill.

The attorney-general finds that one-half of the quantity in conflict is 34,909.38 acres, which he deducts from the above mentioned 314,346.54 acres, leaving 279,437.16 acres as the amount of the grant for the fifty miles, and therefore the maximum quantity that could be patented on construction of the 50 miles. This is 1288.13 acres less than have already been conveyed to the defendant, so that defendant is not only not entitled to any of the lands described in the bill, but should also restore the 1288.13 acres.

VI.

Now it is entirely plain that the grant assumed by the secretary and the attorney-general is not the grant made by the act of congress, and their attempted division of the line and grant is without warrant of law.

(1.) Their grant is a grant along a road 50 miles long. The lands embraced in it are confined to (1) the lands in odd sections in place limits along the 50 miles which enured to the grant, and (2) to such lands in the indemnity limits along the 50 miles as were properly selected as indemnity for losses in the place limits along the 50 miles. And no other lands can be patented for building the 50 miles. The grant can comprise no other lands. It cannot possibly include (3) lands in the indemnity limits along the 50 miles selected to make up losses in place limits elsewhere than along the 50 miles, nor can it possibly include any lands, place or indemnity, not lying alongside the 50 miles, not included between the termini of the road and grant. And of course no lands can be patented, for none are granted, which are not alongside the 50 miles. Nor can any lands alongside the 50 miles be patented for construction of any ten-mile section situate beyond the terminal limits of the 50-mile line and its grant.

And it would seem that they do not regard their "grant" for the 50 miles of constructed line as a present grant, the title vesting on location and selection, and in advance of construction, but rather as the promise of a grant of such lands as should be found along the ten-mile sections when built and certified, and to which no title would pass—that is, which would not be "lands hereby granted"—until they should have been "earned" by construction of road. (Record, 4, par. 12.)

(2.) The act of congress, on the other hand, makes a grant for a line of 83⅓ miles of which the 50 miles

is an integral portion. Upon location title to all the place lands not already disposed of, and on selection (if not on location, because of the deficiency in both granted and indemnity limits) title to all the indemnity lands, along the entire line, vested in the company or in the state as its trustee, even though not one mile had been constructed. *At that time* the lands already vested and lying along the five ten-mile sections afterwards built, might and in fact did comprise (1) the place lands; (2) the indemnity lands selected to make up losses in such coterminous place lands; and (3) indemnity lands selected to make up losses elsewhere on the located line; for instance, losses between Le Mars and Sioux City. On construction of five ten-mile sections of such located line, —whether the five in fact built or any others—the lands embraced in the grant, "hereby granted," along the whole located line of 83⅛ miles—the whole 328,474.80 acres comprised in the grant—could be resorted to for the 320,000 acres required to be patented; and this though not one acre of them were coterminous with the constructed portion of the road. And though the area of lands in odd sections in the place limits along the 50 miles of constructed road did not exceed 200,000 acres, and though the grant (by reason of conflict) along the 50 miles were further reduced to 150,000 acres, still the company would be entitled to patents for 500 sections if they could be found in "the lands hereby granted" situate anywhere along the 83⅛ miles of the located line. The character of the grant made by the first section for the entire located line is not changed by the provisions for patenting the granted lands as ten-mile sections are built and certified. The grant is not

thereupon divided into one grant for the completed portion and another for the uncompleted portion of the whole line, each grant being capable of embracing only those lands between the termini of that portion of the line to which it is attached.

All this we have already shown under our two first points.

(3.) And the act of congress does not contemplate or permit a division of the grant, and the creation of a separate grant for the constructed part of the line, and another for the unconstructed portion, each being complete in itself, and wholly independent of the other.

VII.

Yet such a division is just what the secretary and attorney-general attempt to make. Without it, and without assuming a separate grant for that portion of the line which has been built, it is not possible to limit the lands "hereby granted," and which are to be patented on completion of ten-mile sections, to the lands between the termini of the constructed part of the line, and to make the quantity of lands (actual or supposed) in the odd sections in the place limits between those termini the maximum quantity that can be patented upon such construction, however inferior such quantity may be to the quantity prescribed by the 4th section of the act. And if the quantity to be patented is not limited by the quantity of land granted in the odd sections in the place limits along the constructed part of the road, then the latter quantity is not a factor in determining what quantity shall be patented on completion of ten-mile

sections. And therefore it can make no difference whether that quantity be less than 100 full sections along any ten miles, or whether it be further reduced by reason of a conflicting grant, whether such conflicting grant does or does not reduce the grant for defendant within the conflicting limits from every odd section to one-half of every odd section. And the question of the extent of the grant within those limits, and the further questions as to the right of indemnity, and its extent, for lands in the conflicting limits disposed of to the Milwaukee Co. or to settlers, have no bearing on the question whether, out of the 328,474.80 acres unquestionably granted, there should be patented for defendant 500 sections for the 50 miles of road built and certified. And so neither of these questions can arise in this case.

VIII.

And even if the grant can be divided into two—one for the constructed and the other for the unconstructed portions of the line—by what right do the secretary and attorney-general make a further division, and cut off from the constructed portion the southerly $6^{18}/_{100}$ miles?

Is the grant, instead of a single grant for the whole road, to be divided not only into two separate grants, but into as many separate grants as there are ten-mile sections? If this be so, then the fourth section, instead of merely disposing of the lands already granted in the first, makes a new grant for each ten-mile section—a grant of quantity, an absolute grant of 100 sections for each ten miles, when built, without either lateral or even terminal limits.

This is absurd enough, but it is the necessary consequence of the argument we are opposing.

But if the whole 56 13/100 miles of constructed line are to be taken into account, the contention of the secretary and attorney-general is clearly without basis in fact. If the grant is for the 56 13/100 miles, any granted lands alongside of the 56 13/100 miles may be patented. Conceding that the total quantity to be patented for the 50 miles is the total quantity in odd sections in the place limits of the grant, such limit cannot be fixed till it is known what are the contents of the odd sections along the whole 56 13/100 miles. It is not enough to give the quantity (actual or supposed) along only 50 of the 56 13/100 miles to which the grant attached.

No attempt has been made to show the quantity along the *whole* constructed part of the road from the Minnesota line to Le Mars, even within the unauthorized limits devised in 1887. The evidence is limited to the first 50 miles. *Non constat* but that the quantity in odd sections in place limits along the 56 13/100 miles, even after deducting one-half the odd sections in the conflicting place limits, equals or exceeds 320,000 acres.

Ten sections per mile for 56 13/100 miles gives 359,232 acres. Make the deduction of 34,909 acres as made by the attorney-general, and the remainder is 324,323 acres.

The burden of reducing this below 320,000 acres is upon the United States. The fact, if it exist, is vital to their case, and

"It is well settled that where relief can be granted only by setting aside a grant, a patent, or other evidence of title issued by the government in the

orderly administration of the affairs of the land department, the evidence in support must be *clear, strong and satisfactory.*"

United States v. Des Moines, etc., Co., 142 U. S. 510, 541.

And even as to the first 50 miles the United States have produced no evidence either of the actual area of the odd sections in the *true* place limits—those of 1867—along the 50 miles, or of the quantity in the conflict. The record shows these quantities according to Mr. Sparks's limits, along the 50 miles. (Record, p. 55, par. 31-33; Ex. 23; Ex. 24, pp. 172-5; Ex. 25, pp. 176–185; *Supra*, XXIII.) And it shows the quantity in the *true* limits through the area of conflict (Record, 55, par. 34; Ex. 26, pp. 185, 188,) and also on the rest of the whole line of 83⅛ miles. (Record, 55, par. 35; Ex. 27, pp. 188-198.) But it nowhere shows the quantity *along the 50-mile portion*, according to the *true* limits. The limits devised in 1887 cannot be substituted for those established in 1867. *U. S. v. Hancock*, 133 U. S. 193, 197.

The plaintiffs' case is, therefore, fatally defective in proofs as well as in law.

IX.

The futility of the attempt to divide the grant made by congress into two separate grants, each distinct and independent, one for 50 miles of the constructed portion, the other for 6^{13}⁄$_{100}$ miles of the constructed portion and the whole of the unconstructed portion, is apparent from this:

There are in the whole grant, (even if the grant in the conflicting place limits be of only one-half of every odd section)..... 328,474.80 acres
Of these there are situate south of the 50 miles..... 26,017.33

(These are the lands in Plymouth and Woodbury counties, in form reconveyed to the United States, and colored blue on the map at page 32. See XIX, *supra*.)
This leaves lying alongside of the 50 miles..... 302,457.47 acres
The plaintiffs say, in the bill, that, of these lands, defendant is entitled to have patented for building the 50 miles, only..... 279,237.16

Leaving an undisposed of residue of 23,220.31 acres

What is to be done with these lands? They are within the grant for the whole line. That is conceded. Plaintiffs say they could not be patented for the 50 miles of constructed line along which they lie. They must therefore have always been subject to be patented for some other ten-mile section, along which they do not lie. But if the grant for the 50-mile portion is separate and distinct from the grant for the rest of the line, this could not be. Lands beyond the terminal limits of a grant cannot come within it, whether they are or are not within the limits of another grant. To admit that these lands could be patented for a ten-mile section lying south of the 50 miles is to admit that there is no separate grant for the 50 miles, and is to admit that the coterminous

principle has no application to the patenting of the lands; that lands anywhere on the line are subject to be patented for any ten-mile section; and therefore the quantity to be patented for any ten-mile section cannot be limited by the quantity of granted lands, or the quantity of lands in odd sections, lying along such completed section of road. It is to admit that the quantity to be patented for each ten-mile section is the same—100 sections of land—until the whole grant is exhausted, and that in this respect no distinction can be made between a ten-mile section situate within, and one situate without, the conflicting place limits.

Once admit that this surplus of lands was subject to patent on the completion of a ten-mile section not embraced in the 50 miles, (and the admission must be made,) and the whole fabric of the case as made by the bill, and that made by the secretary of the interior, falls to the ground.

X.

As to the contention of the United States that the lands to be patented on completion of any ten-mile section must be such and no others as lie alongside of, are coterminous with, such completed section.

In the opinion of Judge Shiras this contention is stated and refuted, and he well says that, if it be allowed, then the company, on completion of the sections between Sioux City and Le Mars, would not be entitled to have any lands patented, for there are substantially no lands coterminous with that part of the line. And he adds that in such case, the company would be entitled, on construction merely

of the sections north of Le Mars, to have patented all the lands coterminous with those sections,—that is, all the lands embraced in the grant, even if in excess of 500 sections. (Record, 255.)

There is nothing in the terms of the act which requires the lands patented for any completed section to be coterminous with that section. This has been abundantly shown. Nor is such coterminous rule so generally found in other grants as to require or permit the court to impose it upon this grant.

Bearing always in mind that the office of the patent is not to transfer the title, which has already passed by the act, but to identify the lands patented as being among those granted, and to furnish the company with the highest evidence that such lands are free from restraints on alienation and liability to forfeiture, should the entire road not be seasonably completed, it may be well to examine the acts of congress with reference to the application of a coterminous rule in the issue of patents.

In the earliest railroad grant, (that of September 20, 1850, to Illinois,) there is no restraint on alienation, nor any provision for patents. On failure to complete, title to lands sold is to be good in the purchasers, and the unsold lands are to revert. There is no provision for patents, and of course no coterminous restriction. (9 Stat. 466; 1 Lester, 160.)

In the series of grants next succeeding that to Illinois, (all being six-section grants) it is provided that "a quantity of land not exceeding 120 sections, and included within a continuous length of 20 miles of said road may be sold" in advance of any construction; and on certificate of construction of each

20-mile section of the road "another like quantity of land hereby granted may be sold;" and if the road is not completed within a time specified, "no further sales shall be made and the lands unsold shall revert to the United States." The lands that may be sold must lie along a continuous 20-mile section of the line, but need not be coterminous with any *constructed* section. No provision is made for patents.

See Grant to Missouri, June 10, 1852; (10 Stat. 8; 1 Lester, 183.) To Arkansas and Missouri, February 9, 1853; (10 Stat. 155; 1 Lester, 196.) To Iowa, May 15, 1856; (11 Stat. 9; 1 Lester, 258.) To Florida and Alabama, May 17, 1856; (11 Stat. 15; 1 Lester, 259.) To Alabama, June 3, 1856; (11 Stat. 17; 1 Lester, 261.) To Louisiana, June 3, 1856; (11 Stat. 18; 1 Lester, 263.) To Wisconsin, June 3, 1856; (11 Stat. 20; 1 Lester, 264.) To Michigan, June 3, 1856; (11 Stat. 21; 1 Lester, 265.) To Mississippi, August 11, 1856; (11 Stat. 30; 1 Lester, 269.) To Minnesota and Alabama, March 3, 1857; (11 Stat. 195; 1 Lester, 279.)

The act of July 1, 1862, for the Union Pacific railroad, a ten-section grant, with no indemnity provision, provides that on completion and acceptance of each forty-mile section, patents shall issue "conveying the right and title to said lands to said company, on each side of said road as far as the same is completed, to the amount aforesaid." (12 Stat. 489, § 4; 2 Lester, 52.)

The grant to Kansas of March 3, 1863, the first ten-section grant to a state, provides that on completion of any twenty-mile section, all the *place* lands coterminous with such section of completed road may be sold. (12 Stat. 772; 2 Lester, 76.)

The grant of May 5, 1864, to Minnesota, (13 Stat. 64; 2 Lester, 92,) and that of the same date to Wisconsin, (13 Stat. 66; 2 Lester, 93,) are the first grants to states (except the short-lived grant to Minnesota by act of June 29, 1854, repealed August 4, 1854,—10 Stat. 302, 575,) which provide for the issue of patents. The grant in each case is of every alternate odd section of public land "to the amount of five alternate sections per mile on each side of the said railroad on the line thereof." And the provision for patents is that on completion of any continuous 20 miles of the road, patents shall issue for the lands "on each side of the road as far as the same is completed, and coterminous with said completed section, not exceeding the amount aforesaid."

The grant to Michigan of June 7, 1864, provides that on completion of each 10-mile section, all the lands coterminous thereto, without limit as to quantity, shall be patented. (13 Stat. 119; 2 Lester, 105.)

The grant to the Burlington & Missouri River Railroad Co. by the 18th and 19th sections of the act of July 2, 1864, (13 Stat. 356; 2 Lester, 129,) provides that on completion of each 20-mile section *all* the coterminous lands shall be patented. This grant, like the Union Pacific grant, gives no indemnity lands; but the same provision is found in the Northern Pacific grant of July 2, 1864, under which, on completion and acceptance of any 25-mile section, more lands might be patented than 20 sections per mile of completed road in the states and 40 in the territories. (13 Stat. 365, § 4; 2 Lester, 132, § 4.)

Provisions in all respect similar to those in the act of May 12, 1864, that on completion of each ten-

mile section of road, patents shall issue for a designated number of sections of land, or that a specified number of sections may be sold, without any limit as to locality, occur in the grant to Michigan and Wisconsin, March 3, 1863; (12 Stat. 797; 2 Lester, 76.) To Michigan, June 20, 1864; (13 Stat. 140; 2 Lester, 108.) To Wisconsin, June 25, 1864; (13 Stat. 183; 2 Lester, 110.) To Oregon, July 2, 1864; (13 Stat. 355; 2 Lester, 121.) Each of these grants was for a military road. The same provision is found in the act of March 3, 1865, increasing to ten sections the grant of June 3, 1856, to Michigan. (13 Stat. 520; 2 Lester, 141.) While in the act of the same date increasing to ten sections the Minnesota grant of March 3, 1857, patents are to issue, on completion of each ten-mile section, for the place and indemnity lands "not exceeding ten sections per mile situated opposite to and within a limit of 20 miles of the line of said section of road thus completed." (13 Stat. 526; 2 Lester, 142, 144.) And this provision is also found in the grant to Missouri and Arkansas, July 4, 1866, (14 Stat. 83; 2 Lester, 164,) and in that to Minnesota July 4, 1866, (14 Stat. 87; 2 Lester, 169.) But by the act of July 13, 1866, the coterminous restriction imposed by the act of March 3, 1865, on the disposition of lands granted to "the territory and state of Minnesota," by act of March 3, 1857, was removed, while it was retained as to place lands, in grants made to the state and not to the territory. (14 Stat. 97, §§ 3, 4; 2 Lester, 175.)

And in the grant to Iowa of June 2, 1864, three weeks after defendant's grant, on completion of a 20-mile section of a main line, one-third of all the lands

granted for a connecting branch are to be patented. But in respect to all the other lines named in the act of May 15, 1856, to which the act of June 2, 1864, is an amendment, the original provisions as to disposal are retained, unless section 8 of the later act means that on completion of each 20-mile section of road, 120 sections of land are to be patented, without regard to locality—a view supported by the next section 9. (13 Stat. 95; 2 Lester, 101, etc., §§ 4, 7, 8, 9.)

Without going through the later grants, it is evident that the difference in the provisions of the different acts as to the disposition or patenting of lands was intentional on the part of congress; and that where congress has not imposed the coterminous restriction, neither the land department nor the courts can interpolate such a restriction into the grant.

See *United States v. Missouri, etc., Ry. Co.*, 141 U. S. 358, 371-4.

In a controversy arising on this act of May 12, 1864, between the McGregor & Mo. Riv. R. Co. and the Milwaukee Co., as successor of the McGregor Western, this question was directly presented. The secretary of the interior (Mr. Schurz,) in his decision of August 18, 1879, sustaining the claim of the latter company, compares the provisions for patenting in the various land-grant acts, and reviews the decisions of this court and of the interior department, and says:

"Thus instructed by the language of similar grants and by the interpretations of the courts, it must be held that the act of May 12, 1864, make no provision whatever for coterminous limits; that it is

restricted by quantity and lateral limits only; and that upon the proper certification by the governor, patents for 100 sections of land, selected by direction of the secretary of the interior, should have been issued for each ten miles completed, if that quantity could be found within twenty miles of the line of the road."

This decision is printed in the report of the commissioner of the general land-office of October 30, 1879, appended to the secretary's report of November 15, 1879. House Ex. Doc., 2d session of 46th congress, (1879-1880,) vol. 9, pp. 485-9.

SIXTH.

But, if the questions are properly in this case, then we say—

THE GRANT IS OF EVERY ALTERNATE ODD SECTION IN THE PLACE LIMITS, WHETHER WITHIN OR WITHOUT THE CONFLICTING PLACE LIMITS.

AND THE DEFENDANT IS ENTITLED TO FULL INDEMNITY FOR ALL LANDS IN ODD SECTIONS RECOVERED BY THE MILWAUKEE CO., OR DISPOSED OF TO SETTLERS WITHIN THOSE LIMITS.

This was the opinion of Judge Shiras, who says (Record, 255-6):

"On behalf of the United States it is argued that as the two grants were made in the one act, it must have been the intent to limit each company to the moiety thereof, and that by mere construction the grant should not be extended beyond the fair import of its language. The terms of the grant, however, are explicit, and embrace every alternate section along the entire length of the road within the ten-section limit, with the proviso that if upon the definite location of the line it was found that the United States had sold or permitted pre-emption or homestead rights to attach to any of these alternate sections, or that the same had been reserved by the United States for any purpose whatever, then indemnity lands should be selected in lieu thereof within the twenty-mile limit. Upon the location of defendant's line it was found that a moiety of the alternate sections within certain limits had been reserved by the United States for the purpose of aiding in the construction of another line of railway, and hence, to replace these lands, the defendant company could resort to the lands within the limits of the grant lying outside of those passing to the C. M. & St. P. Ry. Company.

"If the grant to the McGregor line had been made by another act of congress, it could not be claimed that it did not reserve lands, within the meaning of the exception found in the present act, so as to entitle the defendant company to claim indemnity therefor; and the mere fact that the two grants are found in one act of congress, instead of in two, does not change the result in this particular.

"I hold, therefore, that the grant is not limited to one-half of the alternate sections found within the overlapping limits of the two grants, and that the defendant company is entitled to make claim for the proper portion of the lands that were reserved for the McGregor road, and which passed to the C. M. & St. P. Ry. Company."

The argument for our position could not be stated with more precision. And we shall confine ourselves to comment on the reasons adduced by the secretary of the interior in support of the opposite position. (Record, 170-1.)

The secretary's argument is that, upon our construction of the grant, "the purpose of the granting act was to make what would amount to a double grant." Should each company have indemnity for lands lost by grant to the other,—

"A quantity of land equivalent to all the odd and even numbered sections in said common granted limits would be passed under the granting act. This I think could not be justified by any proper construction of the act, neither can I conceive it to have been intended by congress. The grant was of a moiety for each road within the common granted limits of both roads. This accords with the view expressed by the supreme court in the case of *St. Paul & Sioux City R. Co. v. Winona & St. Peter R. Co.*, 112 U. S. 720. Either this is true or congress by the same act twice granted the same lands; to say that it did or intended to do this would be to say that it acted unreasonably or without a proper under-

standing of what it was doing. Now, since indemnity is allowed only for lands granted and lost from the grant, and since, in the common indemnity limits of those two roads only a moiety was granted, it follows that neither company has any legal claim for indemnity on account of the moiety granted to the other."

The vices of this reasoning are: (1) Instead of construing the granting act according to its plain terms, the construction is upon a supposed intent of congress not expressed in the act. (2) The secretary errs in his assumption that this court held in the case cited that only a moiety of the lands in the conflicting limits was *within the terms* of the grant to each company. Of course only a moiety enured to each company under the grant; but the question is what was within the terms of the grant, and not what in fact passed under it; for the lands for which indemnity is given are necessarily those to which the grant did not attach, and which, though within its terms, did not pass by it.

I.

The act in its terms makes no distinction between the alternate odd sections, wherever situate on the line, and whether disposed of or not disposed of at the date of the grant, with the single exception of lands "heretofore reserved,"—that is, reserved prior to the date of the granting act.

It grants in terms "*every* alternate section of land designated by odd numbers," etc., along the entire road.

In terms it includes lands already disposed of and to which the United States had no title at the date

of the grant, and which could not possibly pass by the grant.

But it gives indemnity for such lands as well as for those belonging to the United States at the date of the grant, and title to which passed by the grant, but was defeated by the exercise of the power reserved to the United States to dispose of such lands at any time before definite location.

The language is plain: "In case it shall appear that the United States have, *when the lines or routes of said roads are definitely located*, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been *reserved by the United States for any purpose whatever*," indemnity selections may be made of "so much land, in alternate sections designated by odd numbers as shall be equal to such lands as the United States have sold, *reserved* or *otherwise appropriated* or to which the right of homestead settlement or pre-emption has attached as aforesaid."

Indemnity is given for lands disposed of or reserved at the date of definite location, whether the disposal or reservation was before or after the date of the act, and therefore whether in fact granted or not, if within the terms of the grant—within the description of the thing granted; the words "hereby granted," being held to mean "purporting to be hereby granted." This was settled in *Winona & St. Peter R. Co. v. Barney*, 113 U. S, 618, 626.

The lands disposed of in that case *prior to the date of the grant*, and for which indemnity was allowed, had been sold, or had become subject to pre-emption rights. But the law places on the same

footing such lands and land "reserved" or "otherwise appropriated," and as indemnity is given for lands sold or entered for pre-emption prior to the grant, so it is given for lands "reserved" or "otherwise appropriated" in any manner which keeps them from passing under the grant, whether prior to the date of the grant or between the date of the grant and the location of the road. And such was the opinion of this court in the case cited, where it is said, pp. 625–6:

"The acts of congress in effect said: "We give to the state certain lands to aid in the construction of railways lying along their respective routes, provided they are not *already* disposed of *or* the rights of settlers under the laws of the United States have not already attached to them, or they may not be *disposed of* or such rights may not have attached, when the routes are finally determined. If, *at that time*, it be found that, of the lands designated, *any* have been *disposed* of *or* the rights of settlers have attached to them, other equivalent lands may be selected in their place within certain prescribed limits."

Now in this case the lands in conflicting limits on which the grant did not take effect were excluded from passing under it, *not* because they were not within the terms of the grant,—which is of "*every* alternate section,"—but because of a matter *dehors* the grant, to-wit, the definite location of the McGregor Western road.

This must be so, for if the McGregor Western road had *never been located*, all the lands here in question (except those taken by settlers) would have passed under the grant to defendant, on the definite location of its road. And they would so pass

because, and only because, they were within the terms of the grant.

Suppose the McGregor grant had been the earlier, like that for the line between Le Mars and Sioux City. In that case, if the line had been located *prior* to defendant's grant, none of the lands in the conflicting place limits could pass under defendant's grant. Though within the terms of the grant, they would not and could not be in fact granted, because not belonging to the United States at the date of the grant. And, because of the relation of title to the date of the granting act, the same result would follow though that line were located *subsequent* to defendant's grant or defendant's location. *United States v. Southern Pacific R. Co.*, 146 U. S. 570. But it is for just such a case that indemnity is given, for they were lands found to have been already disposed of at the date of defendant's definite location.

But if in the case cited the Atlantic & Pacific railroad *had never been located* the Southern Pacific Co. would have taken the land, because within the terms of its grant.

In the case cited, therefore, and in the cases supposed, the company with a later grant is given indemnity for place lands passing under the earlier grant, because "it appears" that, at the date of location, under the later grant, such lands have been "otherwise appropriated" by the United States, and so were never in fact granted.

In this case the lands in controversy were public lands at the date of the grant. They were not lands "heretofore reserved," so as to be excepted from the operation of the grant. They were within the

terms of the grant, and would have passed to defendant on definite location, if the McGregor line had never been located. But, on definite location of the McGregor line, whether before or after defendant's location, the lands are in this position. They are all of them within the terms of the grant to each company. All of them would pass to either company should the other company not locate its line. The titles of the two companies are of equal date so that neither has priority. In this case the lands must be divided, not because each company's grant in terms covers but one-half, but because each grant covers the whole, and they are of equal date.

The case is like that of two deeds of the same property to separate grantees, of the same date and delivered simultaneously. The grantees will take as equal tenants in common, not because each deed does not, but because each deed does, in terms convey the whole.

Challefoux v. Ducharme, 4 Wis. 554, 562.

This is upon "the principle * * obviously founded in justice and common sense, that where two men have each a title to the same piece of land, which is apparently perfect, and by which either might hold the whole but for an equally good title in the other, they must take each a moiety."

Shove v. Dow, 13 Mass. 528, 535.

And the same result—that only one-half the lands in the conflicting place limits would enure to each grant—would follow if the two grants, each of *every* alternate odd section, were approved on the same day, and it could not be ascertained which was approved first.

In case of such grants by different acts approved the same day, since fractions of a day are to be regarded, (*Louisville v. Savings Bank*, 104 U. S. 469, 474–8,) and each act given effect from actual approval, the one first approved would, on location, take all the lands. And it would take them because they are all included in the description of lands granted in each act,—in that first approved as well as in that last approved.

But each of such acts would equally include in its description all the lands in a case where relative priority of approval could not be ascertained. Each act in terms grants all the lands, whatever the relative dates of their approval. And the reason why in this last case the lands would go to the two grantees in moieties cannot be that each act grants only a moiety. Each grants the whole, but the two grantees must take in moieties because each has as good a title as the other to the whole.

II.

This court did not hold in the case of *Sioux City & St. Paul R. Co. v. Chicago, Mil. & St. Paul Ry. Co.*, 117 U. S. 406, that the grant to each company was, in the conflicting limits, a grant of only one-half of every alternate section, or of only every other alternate section.

The court treats the case as one of *conflicting* grants, (which it would not be if each grant was of only a moiety,) and in no way distinguishes it in this particular from other cases of conflict, where each company would, under its own grant, be entitled to all the lands in dispute except for the grant to the other. Thus the court say (p. 407):

"The act granted for the aid of *each* road *every* alternate section. * * * The roads to be benefited by this grant have both been constructed, and *both* companies are entitled to *the odd sections* within ten miles of their lines of road, and to the indemnity lands, so far as they can be found, of odd numbers within twenty miles. But as the roads cross each other, these limits also cross and overlap, and the claims to the odd sections" (i.e., claims well founded on their respective grants) "within those limits *necessarily conflict.*"

If it had occurred to the court that each grant was, within the conflicting limits, of only a moiety of what it was along every other part of the line, Mr. Justice Miller would doubtless have so stated, and he certainly would not have used the language we have quoted. And in that case this court decided that defendant was entitled to the identical parcels of land, place and indemnity, which are in controversy now.

And in the case of *St. Paul & Sioux City R. Co. v. Winona & St. Peter R. Co.*, 112 U. S. 720, the court, holding that in the case of two contemporaneous grants by the same act the lands in the conflicting place limits are to be divided, puts its decision on these grounds, (pp. 726-7:)

(a.) When *all* the odd sections are granted, the title to the alternate sections in the place limits is fixed in each case by definite location, "and in case of each road the title relates back to the act of congress."

(b.) This case is within the general rule, and the title of each company relates to the date of the act. (That is, each company has a grant of *all* the odd sections, and so is within the rule applicable "where *all* the odd sections are granted.")

(c.) The fact that the grants are by the same act does not take the case out of the rule, so as to permit one company to obtain priority by earlier location or construction.

(d.) As each company thus has a grant of *all* the lands, and neither has priority, they must "*take* the lands so situated in undivided moieties."

III.

If congress meant to thus reduce the number of sections granted in the area of conflict, it would have said so; just as it would have expressed the intention (if it had such) that the quantity granted by the earlier act for the line between Le Mars and Sioux City, and within the limits of the later grant, should be deducted from the quantity granted by the latter. This is just what it did in another grant made at the same session—the Northern Pacific grant of July 2, 1864. It is there provided that "if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act." (13 St. 365, § 3.) And a similar provision is found in the grant of March 3, 1865, to Minnesota. (13 Stat. 526, § 3; 2 Lester, 143.)

Congress knew that if both roads were located there must be a conflict. It in terms requiredan intersection that must result in a conflict. And nothing would have been easier than to provide for reducing each grant by one-half within the area of conflict. No

reason can be suggested for its failure to make such provision except the fact that it did not intend any such reduction.

Congress in terms made defendant's line the terminus of the grant for the McGregor Western line, thus making a conflict on one side only of defendant's line. But it made no distinction between the grant on the two sides of the line. It granted every alternate section on *each* side of the road. If this language granted every alternate section on the west side, where there was no conflict, (and it certainly did,) it made the same grant, and not merely a grant of *one-half* of every section, on the east side

The secretary thought that to hold that the grant means what it says would be to say that congress acted unreasonably and without understanding in granting the same lands twice by the same act.

But congress has often granted the same lands twice by *successive* acts. The place lands between Le Mars and Sioux City were granted by the act of 1856 and again by the act of May 12, 1864. And when congress thus granted them for the second time it was aware of its former grant, and knew that substantially all the lands between those points would be absorbed by that grant, so that few if any would enure to the second grant. And this is doubtless one reason why congress sedulously omitted any coterminous requirement in the provision for patenting land on construction.

In most if not all of the cases of conflicting grants that have been before this court, congress has in terms granted the disputed lands for each of the conflicting lines—has granted them twice. In every

case each party has a grant of the lands, and its title is good under its grant unless and until defeated by the earlier grant to the other. This would be the case were the interval between the approval of the two acts but a single day or a single hour. But would the fact that congress in terms granted the lands by each of two acts, passed in each house perhaps on the same day, but the one approved a day or an hour before the other, convict congress of want of reason or want of capacity? If it would not, why should the making of two grants on the same day and in the same act, both floating grants,—each in terms including lands that would prove on location of both lines to be within the grant to the other,—be even *prima facie* evidence of want of understanding?

And suppose the effect of giving indemnity to each company for lands lost by the grant to the other "was to make what would amount to a double grant," and suppose that "a quantity of land equivalent to all the odd and even-numbered sections in said common granted limits would be passed under the granting act," (pp. 170-1.) This is just what would happen in case of successive grants, though only a day or an hour apart. If no lands had been disposed of before location, the first grant would take ten sections of granted lands, and the second ten sections of indemnity lands. If the grants are by the same act, each grant takes five sections in the granted and five in the indemnity limits. The result to the United States is identical in the two cases. And in each case congress provides for two lines. If such a result is proper and is intended by congress when the grants for two lines are a day

apart, what reason is there for holding that the result would be so improper as to convict congress of incapacity in intending it when the grants are made on the same day or in the same act?

In both cases, as in nearly every grant (original or as amended) to a state for a line of railroad, congress considers ten sections a mile as the proper quantity. It intends that each company shall have that quantity, if it can be found within the place and indemnity limits, for each mile. It is so intended even where two grants conflict if one is earlier even by a day than the other. If ten sections per mile is the fair quantity for a road with no conflicts, why is it not a fair quantity for a road with conflicts? Is the latter any less costly to build than the former, or of any less value to the government? And if ten sections a mile is a fair quantity for each of two roads with grants by the same act, for each mile *outside* the area of conflict, (and that is not disputed,) what reason can be adduced why it is not a fair quantity—why it should not have been, why it was not, considered by congress a fair quantity—for each mile *within* the conflict?—as much so as if the grants had been by successive acts.

IV.

This question has already been decided in our favor, not only by Judge Shiras, but by the United States circuit court for Minnesota and by this court on appeal, in a case where it was squarely presented. *Winona & St. Peter R. Co. v. Barney*, 113 U. S. 618; *S. C.* (on 2d appeal) 117 U.S. 228. The case was this:

The Winona & St. Peter R. Co., having built its

road from Winona westerly to Waseca, a distance of 102 79/100 miles, contracted, on a sufficient consideration, to convey to Barney and others as many acres of the lands comprised in its land grant as it should receive from the state by reason of the coustruction of such portion of the road, excepting lands necessary for right of way, stations or other uses in operating the railway. The contract provided in terms how the quantity to be conveyed should be selected. A large part of the lands (more than 300,000 acres) had been conveyed under the contract, and the suit was brought to compel conveyance of the residue.

That part of the road between Winona and Rochester, a distance of 49½ miles, was built prior to March 3, 1865, and hence could take nothing under the grant of that date.

As to this part of the line, the principal question was whether the company could have indemnity for odd sections in the place limits disposed of prior to the grant. This was at first decided in the negative by Judge Dillon, who allowed a reargument of it. (Printed Record on 1st Appeal, 695, par. VI.) On reargument before Justice Miller and Judge Nelson, the decision was in favor of the right, (Id. 790,) and such was the decision of this court.

That part of the constructed line between Rochester and Waseca, a distance of 53 29/100 miles, intersected the line of the Minneapolis & Cedar Valley Railroad, also a land-grant road, and a principal question was upon the quantity of land the company was entitled to have conveyed to it for that part of the line built within the conflicting limits.

The two companies claimed under the same granting acts. The act of March 3, 1857, granted to the

state six odd sections in place along each line, with indemnity to be taken within 15 miles. Each company located its line past the point of crossing, so that the grant attached to the lands in place.

Afterwards, by the act of March 3, 1865, the grant for each line was increased to ten sections in place, with indemnity to be taken within 10–20 mile limits.

The act of 1865 provided for patenting coterminous lands only (not exceeding 10 sections per mile) as 10-mile sections were completed. But by act of July 13, 1866, the coterminous restriction was removed, as to *indemnity* lands, so that there could be taken from the indemnity lands lying outside of any 10-mile section of the road, the quantity needed to make up the amount which the company was entitled to have patented for such section when constructed, and not found in place along such 10-mile section.

And so the question of the extent of the grant within the conflicting place limits, and the right of the company to indemnity for the lands in those limits that enured to the other company, was directly presented. On the answer depended the quantity of lands the company was entitled to have conveyed to it for construction of the 20 miles built in the conflicting 10-mile limits, and the quantity it was bound to convey to plaintiffs.

The crossing created the following conflicts in the place limits of the two grants:

1. A conflict of the six-mile limits of each with the six-mile limits of the other.

2. A conflict between the 6-10 mile limits of each with the 6-10 mile limits of the other.

3. A conflict between the six-mile limits of each

under the act of 1857, and the 6-10 mile limits of the other under the act of 1865.

The circuit court made no distinction between these three classes, applying the same rule to all the lands in the common 10-mile limits of the two grants. In the direction to the masters forming part of the interlocutory decree, Judge Dillon says:

"Where the defendant's road crosses the Minneapolis & Cedar Valley R. R., (now Milwaukee & St. Paul,) the grants to these two companies conflict or overlap. The effect of this is that where the grants conflict those two roads take as tenants in common, each an undivided half. Under the act of 1865 this makes a deficiency to the extent of the loss occasioned by the conflict, which may be supplied as in the case of other deficiencies. There is nothing inconsistent with this view in the proviso to section 3 of the act of March 3, 1865, which only contemplates a deduction in any event, after full completion, 'from the full quantity of lands granted,' so that the company shall in no event receive more than ten sections per mile." (Printed Record, 1st Appeal, 694, par. 4.)

The proviso referred to relates only to the lands in class 3,—within the six-mile limits of one road, and the 6-10 mile limits of the other.

In the next paragraph, (p. 695,) Judge Dillon holds that while the place lands to be patented for any ten-mile section must be coterminous with it, the indemnity lands need not be.

These conclusions were not changed in the decision of Justice Miller on the reargument. (Id. 790.) Their effect, taken with the decision on reargument that indemnity could be had for lands disposed of before the date of the grant, was that for the 20 miles built through the 10-mile place limits of the Cedar

Valley road, the company was entitled to patents for one-half the lands in place, (whether in the six-mile or the 6-10 mile limits,) and to indemnity lands equal in quantity to the other half of the place lands; so that for the whole distance from Rochester to Waseca, the company was entitled to patents for ten sections for each mile.

And such was the decree. In the masters' supplemental report, they say, (Id. 791:)

"*Third.* That if the defendant company was entitled to receive a full grant of ten sections per mile for that part of the road constructed after the passage of the act of congress approved March 3, 1865, and prior to the date of the contract in suit, to-wit, the road from Rochester to Waseca, a distance of 53 29/100 miles," (including that part built through the conflicting limits,) "then the plaintiffs are entitled to a conveyance of 197,111 93/100 acres, a correct description of which is hereto attached marked Exhibit A."

And the decree made at the December term, 1880, recites, (p. 806:)

"And it further appearing from the report of the masters that there is and always has been land enough in alternate odd sections within ten miles of the line of road between Rochester and Waseca and coterminous therewith, and outside of ten and within twenty miles coterminous therewith or lying westerly of Waseca, to supply, for building that portion of said road between Rochester and Waseca, a full grant of ten sections to the mile, if such lands are applicable thereto."

And, after further recitals, it decrees a conveyance to the plaintiffs of 197,111 93/100 acres, described in a list forming part of the decree, being the same list annexed to the masters' report as Exhibit A, as above quoted. (Id. 807, 808.)

That is, the decree decides that the company was entitled to ten full sections in place or its equivalent in indemnity lands, for each mile of that part of the road built through the conflicting limits, and so requires that quantity to be conveyed as part of the total quantity decreed to be conveyed.

On appeal to this court, the decision allowing indemnity for lands disposed of before the grant, and the decree so far as based on that decision, were affirmed.

The decree, so far as it adjudged that for *all* lands lost in the area of conflict of the ten-mile limits the company was entitled to conveyance of an equal quantity of indemnity lands, was modified.

It was affirmed as to all the lands in the common six-mile limits, where both companies claimed under grants made by the same act—that of March 3, 1857.

It was affirmed as to all the lands in the common 6-10 mile limits, where both companies claimed under grants made by the same act—that of March 3, 1865.

It was reversed only as to the lands where the companies did not claim under the same act, i.e., lands in the six-mile limits of one company, under the act of March 3, 1857, and in the 6-10 mile limits of the other under the act of March 3, 1865.

As to such lands it was held that the companies were not equally entitled, but that they all went to the company within whose six-mile limits they lay, under the earlier grant. And it was further held that the company within whose 6-10 mile limits they lay could not have indemnity for them, because the effect of the proviso referred to by Judge Dillon

was not only to except them from the grant made by the act of March 3, 1865, but also to reduce the quantity of land purporting to be granted by the latter act,—and therefore the quantity for which, if lost, indemnity could be had—by the quantity contained in such excepted lands.

The proviso is:

"*Provided, further*, that any lands which may have been granted to the territory or state of Minnesota, for the purpose of aiding in the construction of any railroad, which lands may be located within the limits of this extension, shall be deducted from the full quantity of lands hereby granted."

And this court, in pointing out the only error found by it in that part of the decree relating to the lands in conflicting limits, says, (113 U. S. 269:)

"The court below therefore erred in holding that the Winona Company was entitled to ten full sections where such interference" (that is between the earlier grant and the later grant extending it) "occurred, without deducting the lands previously granted to the state. The cause must, therefore, go back that the proper deduction may be made by reason of the interference of the two grants, and the elder grant be deducted from the extension made by the act of 1865."

On a second appeal, the court correcting an inadvertent remark in the former opinion which had misled the circuit court, reaffirms what it had before decided, viz., that the lands in the six-mile limits of each road and in the 6-10 mile limits of the other are to be deducted from the quantity granted to such other, and concludes:

"*This quantity only*, in addition to the lands used for the track of the road," etc., "should, therefore, be deducted from the number of acres to a conveyance of which from the company the plaintiffs, by

the decree of the court below at its December term, 1880, were adjudged to be entitled." (117 U. S. 232.)

The case therefore not only established a principle of construction which is decisive of this case, viz.: that for all lands disposed of before definite location the grantee is entitled to indemnity if they are within the terms of the grant, if the act purports to grant them, but it applied that principle to a case on all fours with this case, if this case is such as to present the question at all.

V.

On this as on every other branch of the case the defendants invoke the aid of no doubtful construction of the statute. The old rule of rigorous construction of grants like this against the grantee seems in a fair way to be abandoned. *U. S. v. Denver & Rio Grande Ry. Co.*, 150 U. S. 1, 14. The reasons given for it, that the grants are mere gratuities and are drawn up by the grantees, are not true in fact, as regards these congressional grants for railways. The grantee can acquire no beneficial interest, no power of disposition, without large expenditure in constructing road, while the benefits to the United States are manifold and obvious. And even if the grant in the first section—a grant of the naked legal title—is without present consideration, the promise in the 4th section to issue patents upon construction rests upon as complete a consideration as any that come before the courts.

And as to the draughtsmen, there is no basis for the assumption that the framing of these land-grant acts is the handiwork of the grantees. The promi-

nent features common to all were fixed at the outset by the authors of the policy, and the variations in detail in the acts of each congress are directly traceable to the influence of the interior department and the committee on public lands. And see *Hastings & Dakota R. Co. v. Whitney*, 132 U. S. 357, 366.

Resting as defendants' case does on the plain, obvious and natural meaning of the language used by congress, and supported as it is by the decisions of this court, it has nothing to fear even from the rigor of the old rule. A strict construction cannot harm it, so long as it be not a strained one.

SEVENTH.

EVEN IF AN EXCESSIVE QUANTITY OF LAND HAS BEEN PATENTED, STILL THE LANDS DESCRIBED IN THE BILL FORM NO PART OF SUCH EXCESS. THEY WERE PROPERLY PATENTED, AND THE DEFENDANT CANNOT BE DEPRIVED OF THEM THOUGH OTHER LANDS MAY HAVE BEEN IMPROPERLY PATENTED. THE RIGHT OF THE UNITED STATES IS LIMITED TO A CANCELLATION OF THE PATENTS FOR SUCH OTHER LANDS.

(1.) Let it be granted that the United States are correct in their position that the quantity of lands to be patented cannot exceed the total quantity in the place limits along the 50 miles of constructed line, less one-half the quantity in the conflicting limits, and that only the lands along such 50 miles are subject to be patented.

Necessarily, in such case the lands to be patented must be those in the place limits, not disposed of to settlers nor awarded to the Milwaukee Co. And the 15,281.09 acres of place lands specified in the bill exactly answer this description. They ought to have been patented, and so were properly patented.

And the same is true of the 6,728.76 acres in the indemnity limits. After the place lands, the lands that next enure to the grant are such lands, to be selected in the indemnity limits "from the public lands nearest to the tiers of sections above specified"—that is, nearest to the place limits. As these lands cannot be passed over, when selections are made to fill the grant, and selections made of more remote lands, so when there is a question as to whether an excessive quantity of the lands that have enured to the grant,

has been patented on completion of ten-mile sections, the excess (on the plaintiffs' theory) must be looked for *first* in the lands not coterminous with the completed road, and afterwards in the coterminous lands lying farthest from the place limits of the grant. And none of these lands are in either of the two classes.

(2.) And let it be granted, as claimed by the United States, that the defendant, holding these lands, has had an excess patented. This affords no ground for cancelling the patents for *these* lands or recovering them from defendant. The defendant cannot be deprived of lands properly patented, merely because other lands have been improperly patented. If there are any such, it is open to the United States to sue for them, but they have no right to these lands. They are no exception to the rule that a plaintiff cannot recover land that does not belong to him, merely because defendant has other land that does belong to the plaintiff. And it was so held in

United States v. Burlington, etc., R. Co., 98 U. S. 334, 342.

Kansas City, etc., R. Co. v. Attorney General, 118 U. S. 682, 695.

United States v. Budd, 144 U. S. 154, 160-1.

(3.) And this elementary common-law rule is recognized and affirmed by the act of March 3, 1887, (24 Stat. 556,) under which this suit was brought. The first section of that act requires the secretary to adjust every unadjusted railroad grant, and to adjust them "in accordance with the decisions of the supreme court." We do not understand this to be limited to decisions in suits to which the United States was a party. An adjustment of this grant in

accordance with such decisions must give defendant the lands here in controversy, for this court has expressly decided that it is entitled to every parcel of them. They are fully described in the record in this court in *Sioux City & St. Paul R. Co. v. Chicago, Mil. & St. Paul Ry. Co.*, 117 U. S. 406, in which they were awarded to defendant.

And "the decisions of the supreme court," so far as we are aware, do not allow any one to recover by a lawsuit land that does not belong to him, merely because other land that does belong to him is withheld by the defendant or by anyone else.

The second section of the act provides that "if it shall appear, on completion of such adjustments respectively, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented by the United States to or for the use of any company," claiming under a railway land-grant, "it shall be the duty of the secretary of the interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all *such* lands, whether within granted or indemnity limits." The secretary is to demand the specific lands erroneously patented, and not other lands in lieu of them. And if the company fails to comply with the demand within ninety days, "it shall thereupon be the duty of the attorney-general to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for *such* lands, and to restore the title thereof to the United States."

It is only for the specific lands erroneously patented that demand is to be made, and suit may be brought.

(4.) Nor is it any answer to our position to say that the defendant has disposed of the lands improperly patented. This very case is provided for in the act.

Section 7 provides that no more lands shall be patented—even of lands that should have been patented—to or for the use of any company, when it shall appear to the secretary that such transfers will create an excess. If these lands had not already been patented, and if the patenting of them would create an excess, the secretary might withhold patents till the lands (if any) improperly patented have been relinquished.

Section 4 makes specific provision for cases where the company has sold, either to citizens or to those who have declared their intention to become such, any lands erroneously patented. Suit is to be brought (after demand and refusal) for those specific lands. When the United States have recovered them (whether by reconveyance or by suit,) the United States will, on application, issue without charge to the several purchasers from the company, patents for the specific lands so purchased by them. Having thus taken the lands from the company, and given them *gratis* to another, the United States are to require the company to pay for the lands it has lost and which the United States have given away, and are to bring suit if not paid. And the company, having first lost the lands and having then paid the United States the full government price for them, is to remain subject to all liability to repay to the purchasers from it the entire purchase money and interest as damages for breach of the covenants, if any, in its deed.

Whether these provisions do or do not inflict a sufficiently severe penalty on a company guilty of building a land-grant railroad, and of having lands patented by the secretary of the interior to the state for its benefit, by mistake of law or fact, they certainly measure the right of the United States to bring suit to cancel their patents or defeat their grants. Conceding that where lands have been and still remain granted, and have not been forfeited nor become subject to forfeiture, the United States may not only have cancelled an erroneous patent, but may also recover the lands, defeat the grant, have it adjudged as in this case, that the absolute title is in the United States, and the company and the mortgage trustees for *bona fide* bondholders be enjoined from asserting any; and, that, after defeating the grant and recovering the lands, the United States may require the company to pay for them—in short, conceding the validity and justice of the act in all its length and breadth, still it nowhere authorizes the United States to demand or recover lands granted, "earned," and properly patented, or to have cancelled patents, not erroneously but properly issued for such lands. And, covering as it does the whole matter of the rights and remedies of the United States for lands erroneously patented, it in effect forbids any such suit as this.

EIGHTH.

EVEN SHOULD THE UNITED STATES BE ENTITLED TO A DECREE AGAINST THE DEFENDANT COMPANY, THE TRUSTEES DEFENDANTS ARE ENTITLED TO PROTECTION AS *bona fide* PURCHASERS.

The trustees duly claimed this protection in their answer, (Record, 34, 36.) The facts on which it rests are set forth in par. XXV of the statement, *supra*, with proper references to the record. The bondholders, represented by the trustees, purchased their bonds in good faith and for value. They lent their money on the security of the lands granted and patented, and they have nothing else to resort to for payment of principal and interest. They are the real parties in interest. Their representatives, the trustees, hold trust deeds or mortgages, the first made before, the second after, the lands were patented, the latter conveying the patented lands by specific description, and thus hold, in trust, either the legal title or a legal mortgage of the complete legal title which the patents purport to convey. Of course no claim of the bondholders could prevail over a *forfeiture* rightfully asserted and enforced by the United States for breach of the conditions of the grant, and in conformity with its provisions. But the United States have not attempted to assert any such forfeiture as to these lands, and as patented lands they are not subject to forfeiture so long as the patents are outstanding. If, as claimed by the United States, the patents were issued by mistake of law or fact, (it cannot be successfully claimed that the patented lands were not all of them within the grant,) then

the United States has an equity, arising from the mistake, to have them reformed or cancelled as to the lands erroneously included. This is all the relief they are entitled to, and this equity should not be allowed to prevail over the at least equal equity of the trustees as representatives of the *bona fide* holders of the bonds—an equity as fully entitled to protection as that of a purchaser of the lands.

U. S. v. California, etc., Land Co., 148 U. S. 31, 40–41.

In *United States v. Burlington, etc., R. Co.*, 98 U. S. 334, 342, it was held a sufficient reason for refusing to set aside patents for land that "it is certainly all mortgaged, so that an incalculable amount of injustice would be done by holding this all void and setting aside the patents."

The decree appealed from should be reversed, and the cause remanded with a direction that the bill be dismissed for want of equity.

J. H. SWAN,
GEO. B. YOUNG,
Counsel for Appellants.

Office Supreme Court, U. S.
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In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, appellant,
v.
THE UNITED STATES.
} No. 149.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, appellant,
v.
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BRIEF FOR THE UNITED STATES.

The case is concisely stated in the opinion of the circuit court (Record, 251) and more fully in the appellant's brief. It grows out of the fact that the Land Office, in 1873 and 1875, patented to the State of Iowa for the use and benefit of the defendant railway company a large amount of lands in excess of what the company was entitled to, in plain violation of the act of Congress of May 12, 1864, making the grant. A part of the lands so patented was subsequently recovered from the defendant by the Chicago, Milwaukee and St. Paul Railway Company, and a part has been reconveyed by the State of Iowa to the United States. This suit is brought to quiet the title of the United States to the residue of the excessive grant. It does not seek to disturb the title of the railway company to any lands that it has really earned.

The legal title to the lands in suit has never been conveyed to the railway company, but remains in the State of Iowa. The State makes no claim to them, but, on the contrary, by an act of its legislature (March 27, 1884, c. 71, Record, 212) has relinquished all interest therein to the United States; but the patents from the United States to the State were in terms for the use and benefit of the defendant railway company, and since that company claims to be the owner in equity by virtue of those patents, the suit is properly brought in equity to determine the real ownership.

There is no pretense that the Land Office was authorized to patent more than 100 sections of land for each ten-mile section of completed railway, and although the railway company never completed but five ten-mile sections, and therefore never earned more than 500 sections or 320,000 acres, the Land Office, in open defiance of the statute, issued patents for 407,910.21 acres, an excess of 87,910.21 acres, or, allowing for 40 acres twice patented, a net excess of 87,870.21 acres. It is the object of the suit to undo this illegal action of the Land Office and to reestablish the title of the United States to so much of the land improperly patented, and not yet conveyed to the railway company, as is in excess of what the company was really entitled to.

The circuit court adjusted the controversy by holding "that the company is entitled to such portion of the lands actually covered by the grant as the number of miles of road actually constructed by it bears to the total length of the located line from Sioux City to the southern boundary of Minnesota," (Opinion Record, 255); in other

words, that inasmuch as the company could have earned but 328,747.80 acres if it had built the entire road from the Minnesota State line to Sioux City (83.52 miles), it is entitled, for the 57.23 miles which it did build, to $\frac{5723}{8352}$ of 328,747.80 acres; and since it is admitted that the company has already received more than that amount, a decree was entered quieting the title of the Government to all the lands mentioned in the bill.

The argument in support of this view is stated fully in the opinion delivered by the learned judge below and needs no amplification here.

The Secretary of the Interior, Mr. Lamar, was of opinion (Record, 163–172) that the railway company, by reason of its construction of five 10-mile sections, had earned 500 sections of land, which he computed at 320,000 acres, but that included in those sections were a certain number of sections within the common limits of the grant to the McGregor Western Railroad Company, in which the defendant's interest was only a moiety, which reduced the area of the 500 sections to 284,827.17 acres; and that the railway company, having already received 280,725.29 acres, was entitled to a further allowance of 4,101.88 acres out of the lands in suit, leaving 17,590.30 acres, which he held ought to be restored to the Government by decree.

The act of Congress making the grant and the various acts of the legislature of Iowa bearing upon the subject are in the record, to wit:

1. The act of Congress making the grant, May 12, 1864 (c. 84, 13 Stat., 72), Exhibit No. 1, Record, 11–14.

2. Iowa act accepting the grant, April 3, 1866 (c. 134, Laws of 1866, p. 143), Exhibit No. 2, Rec., 14–15.

3. Iowa act to accept the grant, April 20, 1866 (c. 144, Laws of 1866, p. 189), Exhibit No. 3, Rec., 16.

4. Iowa act of March 24, 1868 (c. 42, Laws of 1868, p. 49), amending the act of April 20, 1866, Exhibit No. 4, Rec., 16.

5. Iowa act authorizing the governor to certify certain lands to the defendant railway company, March 13, 1874 (c. 34, Laws of 1874, p. 31), Exhibit No. 15, Rec., 112.

6. Iowa act forfeiting lands unearned by the defendant railway company, March 16, 1882 (c. 107, Laws of 1882, p. 102), Exhibit No. 30, Rec., 210.

7. Iowa act relinquishing forfeited lands to the United States, March 27, 1884 (c. 71, Laws of 1884, p. 78), Exhibit No. 31, Rec., 212.

8. Opinion of Secretary Lamar on the questions involved, Exhibit No. 21, Rec., 163–172.

8. Opinion of Judge Shiras in the circuit court, Rec., 251–257.

THE GOVERNMENT'S CLAIM.

	Acres.
The actual area of the odd-numbered sections lying within ten miles on either side of the 50 miles of completed railway and *outside* of the common limits of the grant to the McGregor Western Company is (Exhibit 27, Record, 188–198).....	247,476.87
An undivided half of the odd-numbered sections lying *within* said common limits equals (Exhibit 26, erroneously printed 29, Record, 185–188).....	35,352.64
making a total area at the utmost of	282,829.51

acres which the defendant company could have earned if all the odd-numbered sections lying within the ten-mile or primary limits of the fifty miles of completed road had remained the property of the United States at the time the map of definite location was filed.

The foregoing calculation is on the basis of the map of withdrawal filed in the Land Office July 17, 1867 (Rec., 19), which was approved by the Secretary of the Interior the day before (Ex., No. 7; Rec., 65), and on which the Commissioner of the General Land Office issued directions for withdrawal to the register and receiver at Sioux City, August 26, 1867. (Ex. "C," Rec., 33.)

In 1887 the Commissioner of the Land Office, Mr. Sparks, made a more accurate adjustment of the grant, from which it appears that the total area, given above at 282,829.51 acres, should be 279,439.80 acres. Map, Exhibit No. 23, not printed, but filed as an original exhibit. (Agreed statement, par. 31, Rec., 55.)

If we accept the figures of the map of 1887, to which there would seem to be no objection, inasmuch as the rights of third parties are not involved, 279,439.80 is the utmost amount which the defendant company could have earned by reason of its construction of five 10-mile sections, if all the odd-numbered sections lying within the 10-mile or primary limits alongside said fifty miles of completed road had remained the property of the United States at the time the map of definite location was filed. The railway company has already received and disposed of 280,725.29 acres, making an excess of 1,285.49 acres above what it could have earned on the basis of the map of 1887.

The total amount of acres covered by the foregoing exhibits, Nos. 26 and 27, is not shown in the footings, but the amount is correctly stated above. Appellant's counsel suggest that Exhibit No. 27 includes odd sections south of the 50-mile limit, but they are in error, as can be readily seen by comparing the sections mentioned in the exhibit with the map of definite location.

ARGUMENT.

I submit—

1. That the defendant company is not entitled in any event to more than 282,829.51 acres, or, if we accept the adjustment of 1887, to more than 279,439.80 acres; in other words, that for the fifty miles of road which it completed it was bound to accept the 500 odd-numbered sections that lay within the coterminous 10-mile limits, or, to put it in another way, that partial payments for partial construction were to be made from the adjoining place limits.

2. That the company was not entitled to an indemity for the half of those sections which were granted to it and to the McGregor Western Company in common.

3. I do not admit that the company was entitled to have deficiencies in the adjoining place limits made up until final completion of the road, but the question is not material here.

I.

The question, whether under this grant partial payments are to be made from adjoining lands or whether they may be taken at random from any lands within the length and

breadth of the entire grant, depends upon the construction of the act of Congress of May 12, 1864, making the grant (c. 84, 13 Stat., 72; Ex. No. 1, Rec., 11). The grant is made not by section 4 of that act, but by section 1. Section 4 merely prescribes the method of administering the grant. It provides that the Secretary of the Interior shall issue patents to the State for 100 sections of land as successive 10-mile sections of railway are constructed until the road is completed, "when the whole of the land hereby granted shall be patented to the State for the uses aforesaid, * * * provided, that if said roads are not completed within ten years from their several acceptance of this grant, the said land hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of said roads within such time, not to exceed five years, and upon such terms as the State shall determine; and provided further, * * * should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States."

While the section does not say in terms that partial payments shall be made from alongside the construction on account of which they become due, the other provisions of the act point to that as the true view.

Section one declares that the grant is made "for the purpose of aiding in the construction of a railroad from Sioux City to the south line of the State of Minnesota." Such a railroad would be about 80 miles in length. The total lands available were less than 330,000 acres; and

this was known to Congress, for it had already granted the lands south of Le Mars to another railroad company.

If 100 sections absolutely were to be patented upon the construction of each 10 miles, the total grant would be exhausted on the construction of less than sixty miles of railway, and no lands would remain to secure the completion of the road. But section 4 contemplates that the final patents shall not issue until the completion of the road, for it provides for successive patents from time to time upon the completion of 10-mile sections, "until said roads, or either of them, are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid."

Neither this clause nor the provisions for a reversion to the State after ten years of the lands "hereby granted and not patented," "for the purpose of securing the completion of the said roads" and for a final reversion to the United States "if the State should fail to complete said roads within five years after the ten years aforesaid," can have effect if the appellant's construction prevails. Whereas, by holding that section 4 does not authorize a patent of 100 sections absolutely upon the completion of each ten miles, but only a patent of the coterminous odd-numbered sections not exceeding one hundred, with the benefit, upon completion of the road, of indemnity for all shortages in place lands, effect is not only given to all of the provisions of the act, but every just claim of the railway company is protected.

It is said that this view would not have secured to the company patents of substantial value for the first two or three sections if it had commenced construction at the

south end, but if the purpose and consideration of the grant were to secure to the people a completed road the suggestion is not important, for the company and those from whom it might seek advancements were assured, no matter at which end construction began, that for full performance they would receive the full grant.

Strictly speaking, "the lands hereby granted," mentioned in section four, are only lands within the primary or ten-mile limits, for they alone "are hereby granted" by the first section. Lieu lands were not "hereby granted," but were to be *subsequently* selected by the Secretary of the Interior to take the place of lands "hereby granted" but not remaining in the United States at the time of definite location. The grant reads:

> That there be, and is hereby, granted * * * every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road. But in case it shall appear, etc.

It is true that the grant attaches to indemnity lands when they are selected by the Secretary of the Interior, as it does to lands within the primary limits when the map of definite location is filed. But the Secretary of the Interior never did select any indemnity lands under this grant, and the grant, therefore, never attached to any indemnity lands prior to the issuing of the patents. And since the patents were issued in confessed violation of law, any selection by implication, which might otherwise be inferred from the circumstance that lands within the indemnity limits are included in the patents, can not be permitted to defeat the rights of the United States.

The case of *Railroad Land Company* v. *Courtright* (21 Wall., 310), relied upon by the appellees, is not an authority against the Government's claim that the grant at bar requires the partial payments to be made from lands within the termini of completed portions of the railway; for in that case, to use the language of Mr. Justice Field (p. 315) "the act of Congress, by its express language, authorized a sale of one hundred and twenty sections in advance of the construction of any part of the road," and the lands involved in the case had been sold prior to any construction, in pursuance of such express authority.

The act of Congress of September 29, 1890 (c. 1040, 26 Stat., 496), for the forfeiture of the lands theretofore granted for aiding in the construction of railroads shows the understanding of Congress, at least, that railroad grants generally are to be construed as coterminous, for section 1 of that act provides:

> That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad *opposite to and coterminous with the portion of any such railroad not now completed* and in operation, for the construction or benefit of which lands were granted. And all such lands are hereby declared to be a part of the public domain.

II.

The proposition that the defendant company is not entitled to indemnity with respect to a moiety of the sections included in the common grant to it and the

McGregor Western Company can not be better stated or fortified than in the language used by Mr. Secretary Lamar. He said (Opinion, Rec., 170–171):

> The records of the General Land Office show that there are within the common granted limits of the two roads 70,345.67 acres, one-half of which, as grant in place, would go to each company. That would give to each company 35,172.83 acres within the common ten-mile or granted limits.
>
> It is strenuously urged, however, by both companies that they are each entitled to indemnity for the lands thus lost by grant to the other.
>
> I am unable to conclude that such was the intention of Congress in making the grant. To say that it was would be to say in effect that, in so far as the ten-miles limits of the two grants overlap, the purpose of the granting act was to make what would amount to a double grant. Each company got a moiety of the lands in odd-numbered sections within the common granted limits. Now, should there be allowed to each company indemnity for the moiety lost by grant to the other a quantity of land equivalent to all the odd and even numbered sections in said common granted limits would be passed under the granting act.
>
> This, I think, could not be justified by any proper construction of the act, nor can I conceive it to have been intended by Congress.
>
> The grant was of a moiety for each road within the common granted limits of both roads. This accords with the view expressed by the Supreme Court in the case of *St. Paul & Sioux City R. R. Co.* v. *Winona & St. Peter R. R. Co.* (112 U. S., 720.)
>
> 'Either this is true or Congress by the same act twice granted the same lands. To say that it did or

intended to do this would be to say that it acted unreasonably or without a proper understanding of what it was doing. Now, since indemnity is allowed only for lands granted and lost from the grant, and since in the common ten-mile limits of these two roads only a moiety was granted, it follows that neither company has any legal claim for indemnity on account of the moiety granted to the other.

The act does not give indemnity for lands that were not granted, and as the moiety of the Milwaukee Company was not granted to the defendant company, nor the moiety of the defendant company granted to the Milwaukee Company, neither company can claim indemnity for lands granted to the other. The grant of a moiety to each is a reservation from the grant to the other.

III.

It is true that the lands sought to be recovered lie within the termini of the fifty miles of constructed road, 15,281.09 acres being within the ten-mile limit and 6,728.76 acres within the twenty-mile limit. Thereupon, the defendants say that the particular lands sought to be recovered might have been properly patented to the railroad company, at least those lying within the ten-mile limit, and that the Government can not recover those lands, which were properly patented, simply because the railroad company has obtained other lands which were improperly patented. But the suggestion presents no difficulties, in view of the facts and circumstances of this case. The Land Office, instead of observing the provisions of section 4, limiting its patents

to the number of sections due for the portion of the road completed, improperly patented to the State all of the lands lying within the entire length and breadth of the grant both in the primary limits and in the indemnity limits. The State held the title so improperly conveyed to it as trustee for the railroad company to the extent that the railroad company was entitled to the lands and as trustee for the United States as to the rest. The State has conveyed to the railroad company all, or within a fraction of all, in amount that the company has earned, although not the particular sections that the company was entitled to receive. But the company has disposed of all of the lands which it has received by conveying them to mortgagees under the usual land-grant mortgages, and all of the lands so conveyed have been sold and the proceeds appropriated. Paragraph 39 of the agreed statement (Rec., 56) shows that the defendant company has sold its roadbed, rolling stock, and franchise, and has also sold and conveyed all the lands patented to it, and now has no property or assets unless it be the lands in controversy. Even conceding that primarily the company was entitled to the place lands lying within the primary limits along the constructed road, still the fact remains that it accepted other lands up to the full quantity to which it was entitled under the grant, and having been fully compensated, neither it nor the trustees under its mortgage can be heard in a court of equity to claim the lands in controversy without offering to restore from the lands received by it a quantity equal to those described in the bill.

IV.

There can be no defense of innocent purchasers on behalf of the trustees of the mortgage. Their rights are no better than those of the railroad company. The defense of innocent purchaser applies only to one who has acquired the legal title. (*Vattier* v. *Hinde*, 7 Pet., 252; Langdell's Eq. Pl., 140.)

Respectfully submitted.

LAWRENCE MAXWELL, Jr.,
Solicitor-General.

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In the Supreme Court of the United States.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

THE LAW ASSOCIATION
OF
PHILADELPHIA.

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STATEMENT.

This suit was brought by the United States to quiet its title to 800 acres of land in Dickinson County and 21,179.85 acres in O'Brien County, Iowa, under the act of March 3, 1887 (24 Stat., 556; Rec., pp. 7 and 8).

The lands are claimed by the Sioux City and St. Paul Railroad Company, Elias F. Drake and Amherst H. Wilder, trustees, under mortgages made to them by said company.

THE GRANT.

On May 12, 1864, Congress passed an act granting to the State of Iowa, for the purpose of aiding in the construction of two railroads in said State, certain lands upon express conditions. (Rec., pp. 11, 12, 13.)

The act contained the following provisions:

1. The grant was to the State of Iowa and not to the railroads.

2. One road was to be constructed *from Sioux City* to a point on the south line of the State of Minnesota between the Big Sioux River and the West Fork of the Des Moines River, and the other from South McGregor, Iowa, in a westerly direction, near the forty-third parallel of north latitude, until it intersected the said road from Sioux City to the Minnesota State line, in the county of O'Brien, Iowa.

3. The land granted was every alternate section designated by odd numbers for ten sections in width on each side of said roads.

4. If before the definite location of said roads any of said granted lands were alienated or reserved by the United States, it became the duty of the Secretary of the Interior to cause to be selected from the public lands of the United States nearest to the tiers of sections above specified so much land in alternate sections, or parts of sections designated by odd numbers, as shall equal the lands so alienated or reserved; provided that these indemnity lands shall not be located more than 20 miles from the lines of said roads.

5. Lands reserved or granted before said act were excluded from its operation, except for locating the routes of said roads. (1st Sec.; Rec., pp. 11, 12.)

6. These lands were granted subject to the disposal of the *legislature of Iowa for the purposes aforesaid, and no other.* (Sec. 3, Rec., p. 12.)

7. The said railroads were to remain public highways for the use of the United States Government for the transportation of any property or troops of the United States free of charge. (Sec. 3, p. 12.)

8. The United States mail was to be transported on said roads and branch at a price to be fixed by the Government. (Sec. 6, p. 13.)

9. The lands were to be disposed of by the State *for the aforesaid purpose only, and in the following manner:*

> When the governor of said State shall certify to the Secretary of the Interior that any section of 10 consecutive miles of either of said roads is completed in a good, substantial, and workmanlike manner as a first-class railroad the Secretary of the Interior shall issue to the State patents for 100 sections of land for the benefit of the road having completed the 10 consecutive miles as aforesaid.

And so on by sections of 10 miles until said roads or either of them is completed, *when the whole of the lands granted* were to be patented *to the State for the uses aforesaid and none other.* (Sec. 4, pp. 12 and 13.)

10. If said roads were not completed within ten years from their several acceptances of the grant the lands granted and not patented were to revert to the State of Iowa for the purpose of completing said roads within five years; and upon failure of the State to complete them

within that time then the said lands undisposed of as aforesaid were to revert to the United States. (Sec. 4, p. 13.)

11. The said lands were not to be disposed of or encumbered, except as the same *were patented under the provisions of this act.* (Sec. 4, p. 13.)

12. As soon as the governor of Iowa should cause to be filed with the Secretary of the Interior maps designating the routes of said roads then it became the duty of said Secretary to withdraw from the market the lands embraced within the provisions of the act. (Sec. 5, p. 13.)

Appellant was not named in the act, but was afterwards created, and accepted its benefits. The other beneficiary, the McGregor Western Railroad Company, was named, but no grant was made to it direct.

ACCEPTANCE BY IOWA.

On April 3, 1866, the State of Iowa accepted the lands conferred, and upon the terms, conditions, and restrictions contained in said act of Congress. (Rec., p .14.) By section 2 of this act of acceptance it was provided that the lands granted to aid in the construction of a railroad from Sioux City to the Minnesota line "are hereby disposed of, granted, and conferred upon the Sioux City and St. Paul Railroad Company." (Rec., p. 14.)

Concluding, doubtless, that this transfer of the grant was too broad, and inconsistent with the trust created by the act of Congress, the State of Iowa, on April 20, 1866, passed another act, accepting the lands granted "*upon the terms, conditions, and restrictions contained in said act of Congress.*"

The second section provides:

> Whenever any lands shall be patented to the State of Iowa in accordance with the provisions of said act of Congress said land shall be held by the State in trust for the benefit of the railroad company entitled to the same by virtue of the said act of Congress, and to be deeded to said railroad company as shall be ordered by the legislature of the State of Iowa at its next regular session, or at any session thereafter. (Rec., p. 16.)

This last act referred in its body to the act of Congress as of July instead of May, and on March 24, 1868, the act of April 20, 1866, was amended so as to substitute May for July. (Rec., p. 16.) The caption of the act gave the date correctly. On September 25, 1866, the appellant accepted the provisions of the act of April 3, 1866.

LOCATION AND CONSTRUCTION OF ROAD.

On July 17, 1867, the appellant filed in the General Land Office a plat locating its road *from Sioux City* to the Minnesota line. (Rec., p. 19.)

The construction began in 1872. Appellant did not construct its road from Sioux City to the Minnesota line, but from Minnesota to Le Mars, a distance of 56.13 miles, leaving a gap unfinished from Le Mars to Sioux City of 24 miles. (Rec., p. 51.)

LANDS PATENTED TO IOWA.

Section 4 of the act of Congress (Rec., pp. 12 and 13), which provided that the Secretary of the Interior should issue patents for 100 sections of land for each consecutive 10 miles of completed road, was violated.

The governor of Iowa, in 1872 and 1873, certified to the completion of 5 sections of 10 consecutive miles each, and this was all he certified to. (Rec., pp. 65–67.)

Under section 4 at most only 500 sections could be patented, for only 5 sections of the road of 10 consecutive miles each had been completed. The Secretary of the Interior, in plain violation of the letter of the law, caused to be patented to the State of Iowa 407,870.21 acres, allowing for 40 acres twice patented. If the Government had, on May 12, 1864, owned every section within the 10-mile place limit and each section had contained the full area of 640 acres, the maximum that could have been patented was 320,000 acres. The Secretary of the Interior exceeded this maximum by 87,870.21 acres. (Rec., p. 52, par. 13–16; Ex. 11, pp. 67–84; Ex. 12, pp. 84–103; Ex. 13, pp. 103–110; Ex. 14, pp. 110–112.)

CONVEYANCE TO APPELLANT.

On March 13, 1874, the legislature of Iowa directed the governor to *certify* to the Sioux City and St. Paul Railroad Company any and all lands held by Iowa in trust for the benefit of said railroad company in accordance with the act of April 20, 1866. (Rec., p. 52, par. 17; Ex. 15, p. 112; Rec., p. 50, par. 3, showing that chapter 144 is the act of April 20.) The act of April 20 (Ch. 144 of 11th general assembly), section 2, provides that any lands patented in accordance with the *provisions of said act of Congress* shall be held in trust for the benefit of the railroad company *entitled to the same by virtue of said act of Congress.*

A large part of these lands was not "patented to the State of Iowa in accordance with the provisions of said act of Congress," and appellant was not "entitled *to the same by virtue of said act* of Congress." The State conveyed to appellant of these patented lands 322,412.61 acres, leaving of the 407,870.21 acres patented to the State 85,457.60 acres which the State did not convey to appellant.

It did not convey to appellant any of the lands claimed by the United States in this suit. (Stip., par. 28; Rec., p. 54.)

RESUMPTION BY IOWA AND CONVEYANCE TO UNITED STATES.

On March 16, 1882, Iowa passed an act which, after referring to the act of Congress of May 12, 1864, and the act of Iowa conferring the benefits of the act of May 12 upon appellant, and reciting that the act of Congress provided that lands granted and not patented should revert after ten years, if the road was not completed, and the failure of appellant to complete the road, enacted that all lands granted or intended to be granted to appellant, which have not been earned by it, are resumed by the State, the same as if never granted to said railroad. (Rec., p. 210.)

It is contended by the Government that the lands in controversy had not been earned and that, even if they had been, other lands of equal quantity which had not been earned were taken in their place and sold, and that equity would regard that these lands have the status of the lands so appropriated.

On March 27, 1884, Iowa passed an act providing that all lands resumed by the last-named act are "relinquished

and conveyed to the United States." (Rec., p. 213.) Section 2 of said act provides for certifying said lands by the governor to the Secretary of the Interior, and excepts from that certification lands in Dickinson and O'Brien counties, which are the lands in controversy.

But all of the lands, including these, are relinquished and conveyed by the first section of the act, and the provision for not certifying them in the second section does not limit the broad relinquishment and conveyance in the first section.

LANDS MORTGAGED BY APPELLANT.

On August 26, 1871, appellant, after the location, but prior to the construction of any part of its road, conveyed to E. F. Drake and Alexander H. Rice, in trust, all the lands granted by the act of May 12, 1864, that may hereafter be patented or otherwise transferred by the United States or the State of Iowa to the party of the first part or to which said first party may acquire title by reason of said grant. (Rec., p. 240.) Rice resigned and Wilder succeeded him as trustee.

On February 5, 1884, appellant made to said trustees (after the State of Iowa passed the act of March 16, 1882, forfeiting all unearned lands) a further conveyance, in aid of the previous one, and covering specifically the lands involved in this suit. (Rec., pp. 44–46.)

These deeds were to secure $2,800,000 of bonds, of which all but $660,000 have been paid off by the sale of the lands conveyed by Iowa to appellant. (Rec., p. 61, par. 50.)

AMOUNT OF LANDS CONVEYED TO APPELLANT UNDER A GOOD TITLE.

Of the lands patented to it the State of Iowa conveyed to appellant 322,412.81 acres. (Rec., p. 57, par. 43.)

Of these 41,687.52 acres were recovered of appellant by the Milwaukee Company, thus leaving appellant with a good title to 280,725.29 acres. (Rec., p. 57, par. 43; appellant's brief, p. 22.)

THE MAXIMUM AMOUNT THAT COULD HAVE BEEN EARNED.

If the United States had on May 12, 1864, owned every section within the 10-mile limit, and each section had contained full 640 acres, appellant, having built 5 sections of 10 consecutive miles each, would have earned 100 sections for each 10 miles, making 500 sections, aggregating 320,000 acres of land.

This condition did not exist. The sections varied in area, many containing less than 500 and some less than 400 acres. (See acreage of each section as set out. Ex. 24, pp. 173–175; Ex. 25, pp. 176–185; Ex. 26, pp. 186–188; Ex. 27, pp. 189–198.)

The Secretary of the Interior (Mr. Lamar) assumed that each section contained 640 acres, and that the grant in place limits covered 320,000 acres within the 50 miles, not taking the conflict into account. (Rec., p. 172.) This brought him to an erroneous result. The brief of appellant makes the same assumption as a basis of calculation (pp. 24, 30, 36, 37, 51, 59).

This error vitiates all of the calculation in the briefs based on it.

In calculating the maximum that could have been earned two results, based on different maps, are reached, and the variance is 3,389.71 acres.

First. The actual area of the odd-numbered sections granted May 12, 1864, lying within the 10-mile limit coterminous with the 5 constructed sections, excluding those within the conflict with the McGregor road within the 10-mile limit, was 247,476.87 acres. This conclusion is reached by taking the aggregate of the areas of all the sections set out in Exhibit 27. (Rec., pp. 189–198.) The additions are not made in the record; but 247,476.87 is the correct sum.

The stipulation shows Exhibit 27 to be a copy of the list of lands showing the odd-numbered sections and parts of sections and the areas thereof within the 10-mile limits of the grant to Iowa of May 12, 1864, for appellant, and outside the conflicting limits with the grant which inured to the benefit of the Chicago, Milwaukee and St. Paul Railway Company, according to the diagram of withdrawal transmitted to the land office at Sioux City August 26, 1867, *and within the terminal limits of the five 10-mile sections as defined on Exhibit No.* 23. (Rec., p. 55, par. 35.) It is contended by appellant (p. 91) that there is no evidence of the actual area of sections along the 50 miles within the 10-mile limits and outside of the conflict.

But Exhibit 27, taken with the stipulation, is conclusive of this question. It is clear that Exhibit 27 covers the lands as of the time of the grant, and not as of the time of the withdrawal. It purports on its face to cover the lands *granted.* This fact is also demonstrable. The acres in the

10-mile limits along appellant's whole line, exclusive of those taken up by settlers (whether within or without the conflicting limits) at time of definite location, were 212,067.86. Of these there were within the conflict 50,536.72 (Rec., p. 57, par. 41, Brief of Appellant, p. 82); leaving at the time of location along entire line outside of conflict 161,531.14. Of these there were south of the 50 miles 9,225.26. This leaves, at time of definite location within place limits along the 50 miles, excluding those in the conflict, 152,305.88. But there were at the time, as of which Exhibit 27 speaks, 247,476.87.

This shows that between that time and the time of definite location the Government had disposed of 95,170.99 acres. This demonstrates that Exhibit 27 did not speak as of the time of definite location, but as of the time of the grant. Therefore it is clear that at the time of the grant the sections along the 50 miles within the place limits, excluding those in the conflict, contained 247,476.87 acres. Within the same limits and within the conflict there were at the time of the grant 70,705.28 acres. (Rec., 55, par. 34, pp. 185–188.*) Assuming for the present that appellant could only earn one-half, viz, 35,352.64, the total that could be earned was 282,829.51.

Appellant's brief, page 91, says that Exhibit 27 covers the whole line of 83⅓ miles. This is error, for the stipulation (Rec., p. 56, par. 34) admits that it applies to the terminal limit of the five 10-mile sections. Besides, a comparison of the numbers of the sections set out in Exhibit 27 with the map of definite location, Exhibit 8,

* Appellant's brief admits this to be correct, p. 91, line 13.

shows that none of the lands included in Exhibit 27 lie without the line drawn showing the southern 50-mile terminal limit.

Second. This estimate is based on Exhibit 23, not in the printed record, but on file.

It was made in 1887 by the Land Commissioner of the United States, and shows the place and indemnity limits along the 50 miles constructed. (Rec., p. 55, par. 31.)

The certificate attached shows that it purports to be "corrected by a more accurate measurement." If the question were that of dispossessing appellant or its grantees of any of the land actually granted to it, according to the first map of definite location, it would be admitted that this map could not be looked to; for the rights of third parties might be involved and the title of appellant to specific lands might thus be collaterally questioned.

In ascertaining, however, the aggregate amount which appellant could have earned, with a view of seeing whether it has already gotten the full amount, it is insisted that a more accurate measurement made by the land commissioner of the acreage within the grant is competent evidence not to disturb any vested title, but to ascertain what amount appellant could have earned.

This map and Exhibits 24 and 25 based upon it (Rec., p. 55, pars. 31, 32, and 33) show the acreage granted along the 50 miles within the place limits, after deducting that recovered by the Milwaukee company, to be 279,439.80. Appellant received as shown 280,725.29. By the Sparks map it has received an excess of 1,285.49.

By the map of definite location there is a deficit of 2,104.22. So in the aspect of the case most favorable to appellant it would not be entitled to more than 2,104.22 acres of the land in controversy.

THE CONFLICT.

The act of May 12, 1864, made contemporaneous grants for two intersecting roads, thus creating a common territory, both within the 10 and 20 mile limits. This territory came within the terminal limits of the 50 miles constructed by appellant.

In 1879 the Chicago, Milwaukee and St. Paul Railway company having succeeded to the rights of the McGregor Company, and having located and built the line of that company, brought suit against appellant to recover certain of the lands within the common territory which had been conveyed to appellant. (Rec., p. 52, pars. 18–19.) This suit was determined in this court. (117 U. S., 406.)

It was adjudged that the grants of lands by the act of May 12, 1864, within the place limits were given simultaneously; that neither company could get an advantage of the other by prior location or construction, and that the lands were granted for the two companies in equal moieties.

From the foregoing the following facts appear:

1. The grant was to Iowa in trust and not to appellant direct.

2. The object was to secure the building of a railroad from Sioux City to the Minnesota line that the United States mail, property, and troops might be carried over it.

3. The road was never constructed as contemplated by the act. It was not built from Sioux City, but from the Minnesota line, and only to a point 24 miles from Sioux City.

4. Only 100 sections were to be patented to Iowa for each 10 miles completed.

5. Only 5 sections of road of 10 consecutive miles each were completed.

6. The sections did not contain 640 acres, but varied in area, some having less than 400 acres.

7. The Secretary of the Interior patented to the State 407,910.21 acres, which was far in excess of what the law provided and of what appellant could possibly have earned by building the 50 miles.

8. The State conveyed to appellant 322,412.61 acres, which was in excess of what it had earned.

9. Appellant by the decision of this court had to surrender of this to the Milwaukee road the half of that lying within the common territory.

10. Appellant held and disposed of 280,725.29 acres, which, according to the real acreage as shown by the original map of withdrawal, was within 2,104.22 acres of what it could at the utmost have earned, and which, according to the Sparks map, was 1,285.49 acres in excess of what it could have earned.

11. The State of Iowa never conveyed to appellant any of the lands in suit, and that appellant has no title to any of same.

12. The State of Iowa, trustee, under the act of May 12, 1864, has declared that appellant has forfeited its

right to these lands, and that the same be reconveyed to the United States.

13. While these lands are within the terminals of the 50 completed miles, appellant under conveyances from the State accepted title to other lands of the United States, and to an amount nearly eqval to, if not in excess of, the acreage to which it was entitled, and has sold the same.

POINTS AND ARGUMENT.

The contention of the Government that appellant has received all or nearly all of the lands earned is based upon the following propositions:

The lands earned were those within the place limits coterminous with the five sections of completed road, and appellant could not for each 10-mile section of completed road take any 100 sections in the grant.

The purpose of the grant was to bestow upon each road within the conflict only one half of the odd sections therein contained, and for the sections so bestowed on the other neither road could claim indemnity.

If these be sound, then appellant, for the 50 miles, could only have earned the full area of all of the odd sections within the grant outside of the conflict, and of half of those within the conflict, which, as shown, amounted, according to the Sparks map, to 279,439.80 acres, and to the original withdrawal map to 282,289.51 acres, and it has obtained and disposed of 280,725.29.

I.

PATENTS WERE TO ISSUE FOR LANDS COTERMINOUS WITH CONSTRUCTION.

The act of May 12, 1864, contemplated that the sections should be deeded in 100-section lots as the work progressed, and from lands adjacent to the completed road. The whole purpose and provision of the act was to secure for public purposes, in peace and war, a road from Sioux City to the Minnesota line.

It was known to Congress when this grant was made, and appellants were affected with notice, that a previous grant would absorb most of the public lands within this 10-mile limit from Sioux City for 25 miles north to Le Mars. (Rec., p. 54, par. 26.)

And yet the specific provision was that the road was to be constructed from Sioux City to the Minnesota line.

It is urged in appellant's brief that the fact of its connecting at Le Mars with a land-grant road, obligated to carry the Government mails, troops, and property, sufficiently met the purpose of Congress.

If that were so, Congress would not, after such previous grant, have stipulated for the building of the road from Sioux City.

In time of war, if not in peace, the exigencies may demand the use of more than one road between certain points.

At the time of the Franco-Prussian war the need of greater railroad facilities to the frontier was severely felt, and since that time Germany has vastly improved them.

The fact of Congress stipulating for the building of the road with full knowledge of the other grant is sufficient evidence of its purpose. It is idle to discuss the necessity or the wisdom of a second road. If it were pure caprice, nevertheless Congress had the right to affix it as a condition to its gratuity.

The appellant filed its map showing a survey and location from Sioux City to the Minnesota line. The distance was about 83 miles. Allowing 10 sections to a mile, a section being ordinarily 1 mile square, and the alternate sections being granted on both sides for 10 miles, thus making 100 sections for each 10 miles, it appears that if the grant were full the sections would be appropriated *pari passu* as the road progressed in 10-mile sections, and that they would be exhausted contemporaneously with the completion of the road.

It is equally clear, if appellant's contention be correct, that 100 sections, no matter where situated, were to be patented with the completion of each section of road, that the land would necessarily be exhausted before the completion of the road, as the area had been reduced by a prior grant.

Either Congress did not want to secure the road from Sioux City, named as the initial point, or it expected the entire road for the land left available for it, and did not intend to put itself at the mercy of its donee, and permit it to construct whatever 10-mile sections it might choose, and exhaust the lands and abandon the work, and so thwart the public purpose for which the grant was made.

Apart from the general intent which should in construction resolve every doubt in favor of the public interest, the language of the act shows the unsoundness of appellant's contention that it could earn land where no road ever was or ever will be constructed by it.

The first section grants "every alternate section of land designated by odd numbers for 10 sections in width on each side of said roads."

Section 2 provides that the lands remaining in the United States within 10 miles of each of said roads shall not be sold for less than double the minimum price of public lands. This applied to lands reserved between Le Mars and Sioux City. One purpose of the grant was to enhance by these roads the price of Government lands, those between the two points named as well as the others. This object could not be obtained if the whole road were not built.

Section 5 provides for filing maps designating the routes of said roads, and upon their being filed lands were to be withdrawn from market. This section would not have been complied with by filing a map of part of the route. (*Cedar Rapids R. R. Co.* v. *Herring*, 110 U. S., 41.)

It is absurd to say that Congress required a map of location of an entire road to be filed with no intention of having such road built.

As a matter of fact, appellant did file a map for the entire route, and marked on it Sioux City as "the initial point." (Ex. A, p. 32.)

Section 4 provides that successive lots of sections shall be patented as the road is constructed, and that when it is completed "the whole of the lands hereby granted shall be patented to the State."

This certainly contemplated that the entire road was to be completed, and that after patenting for the successive sections there would still be land left to patent on the completion of the road.

This could only be upon the theory of the Government as to the coterminous grant, and not upon the contention of appellant.

One hundred absolute sections would have exhausted the land necessarily before completion, and nothing would have been left to patent on the completion of the road. Under the construction that the lands coterminous with the completed sections up to 100 sections, if there were so much subject to patent, were to be patented there would be a remainder. If the road were built from Sioux City for the first 2 sections, but little land was left open to patent within the place and indemnity limits, and thus, on the completion of the road, all of the sections not taken up in the successive grants along later construction would be patented. The distance was 83 miles, and if the entire road had been built, no matter from what initial point, the land left open for patent, coterminous with the last 3 miles, would have remained to be granted.

As above shown, many of the sections contained less than 640 acres; consequently, where the grant was undiminished by alienation, there would be more than 100 odd sections coterminous with a 10-mile section of road, thus leaving a surplus to pass upon the completion of the road. There would be no such surplus under appellant's contention.

The construction claimed by appellant would, by exhausting the lands long before completion, also make

meaningless the further provision in the act, in section 4, that lands not patented shall, if the roads are not completed in ten years, revert to Iowa "for the purpose of securing the completion of the road."

If appellant's contention be sound, then it was a foregone conclusion when the act was passed that all of the lands could be earned and demanded before two-thirds of the road was completed.

Likewise, 100 sections taken at random from the place limits is claimed by appellant for the 10 miles within the conflict, and the Government contends, as hereinafter shown, that only half of the odd sections was granted to each road and that no more was intended, and consequently there could be no indemnity except for that arising on account of alienation of the half granted.

A grant for internal improvements is not extended beyond the express intent. In *Leavenworth, etc., R. R.* v. *United States* (92 U. S., 740) the court says:

> It should be neither enlarged by ingenious reasoning nor diminished by strained construction. The interpretation must be reasonable, and such as will give effect to the intentions of Congress. This is to be ascertained from the terms employed, the situation of the parties, and the nature of the grant. If these terms are plain and unambiguous, there can be no difficulty in interpreting them, but if they admit of different meanings, one of extension and the other of limitation, they must be accepted in a sense favorable to the grantor. *And if rights claimed under the Government be set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them.*

The construction must be given that will carry out the intent of Congress. (*Monona and St. Peter R. R.* v. *Barney*, 113 U. S., 618.)

This court has uniformly held that such grants are to be construed favorably to the Government, and that nothing passes but what is granted in explicit terms. (*Charles River Bridge* v. *Warren Bridge*, 11 Pet., 544; *Rice* v. *Railroad Company*, 1 Black, 380; *Railway Company* v. *Philadelphia*, 101 U. S., 540; *Slidell* v. *Grandjean*, 111 U. S., 437.)

In *Chew Heong* v. *United States* (112 U. S., 555) the court quoted approvingly as follows:

> The rule by which we are to be guided is to look at the precise words and to construe them in their ordinary sense, unless it would lead to absurdity or manifest injustice, and, if it should, *so to vary them as to avoid that which certainly* could not have been the intention of the legislature.

In the case of *Lau Ow Bew* v. *United States* (144 U. S., 59) this court said:

> Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate their legislative intention and, if possible, so as to avoid an unjust or an absurd conclusion.

In these cases the express letter of the law was made to yield to the general intent of the statute and the manifest purpose which Congress had in view in passing it. That Congress intended to secure the building of the entire road with the lands granted is indisputable. A construction is asked for the Government consistent with this intent, and not one that puts Congress in the absurd position of

stipulating for a road from Sioux City to the Minnesota line and yet apportioning the vestiture of title in the lands available in such a way as to throw the Government upon the magnanimity of appellant to build one-third of the road—a confidence which the result has demonstrated was entirely utopian.

Appellant, with an unfinished contract, and having pocketed the proceeds of over 280,000 acres of land, is not in a position to insist on a very liberal construction, not urged in contemplation of protecting vested rights and innocent purchasers, but to acquire title to additional lands as payment on a contract which it can never complete.

II.

There is no indemnity for the moiety obtained by the Milwaukee road in the conflicting limits.

The lands within the conflicting place limits were granted by the same act for both roads. Their rights being equal, each took a moiety. Neither acquired any right in the lands granted for the other. This part of the act has been construed by this court in a suit between the two railroad companies, and it was held that within the 10-mile limits, and where the two roads cross each other, they took the land granted in equal moieties, and that the titles they acquired related back to the grant—(*Sioux City and St. Paul Railroad Co.* v. *Chicago, Milwaukee and St. Paul Railway Co.*, 117 U. S., 406.)

The appellant could not have earned more land than was granted within the place limits, for it could not have indemnity for what was not granted.

Therefore, in estimating, as has been done, the maximum that could have been earned, not more than the moiety of the odd sections in the conflict can be taken into account.

In appellant's brief (pp. 112–119) it is claimed that this court has decided in the cases of *Winona and St. Peter Railroad Company* v. *Barney and others* (113 U. S., 618), and *Barney* v. *Winona, etc., Railroad Company* (117 U. S., 228), that where lands under the same act are granted for roads that intersect, each road is entitled to indemnity for the half of the lands in place limits taken by the other. This question was not passed upon by this court in either case, and it does not appear either in the statements or the opinions that such a point was made.

While the opinions do not discuss nor decide this question, it is sought to make it appear that this court, in effect, passed upon it by affirming the decree of the lower court in this respect. (Appellant's brief, pp. 117, 118.)

When the point was not assigned as error, and was passed sub silentio, the fact of a decree of affirmance being entered is no ground for assuming that this court adjudicated the question. The circuit judge held that indemnity for lands lost in conflict existed, but he put his decision not upon the fact of a contemporaneous grant to two roads, but upon the terms of a subsequent act (13 Stat., 526).

This suit was not between the Government and its beneficiary, but was between the beneficiary, which had already received title from the Government, and a contractor.

It does not appear from the record that there was any controversy in the lower court as to the company's right

to receive indemnity for moieties of sections within conflicting place limits under a common grant, and no party to the suit could have had any possible interest in denying this right.

These cases, therefore, can in no sense be considered as deciding the point claimed.

In *Donahue* v. *Lake Superior Canal, etc., Co.* (155 U. S., 387) this court said:

> The rule is that where two lines of road are aided by land grants made by the same act, and the lines of those roads cross or intersect the lands within the "place" limits of both at the crossing or intersection do not pass to either company in preference to the other, no matter which line may be first located or road built, but pass in equal undivided moieties to each. This rule was evidently in the mind of Congress when it passed the confirmatory act of 1889, for in the last sentence of section 4 there is a provision that a moiety forfeited on account of the noncompletion of one main or branch line should not inure to the benefit of the completed line.

Thus only a moiety passed to each company, and that was all that was intended by Congress. An indemnity could not be claimed for what Congress did not intend to grant.

The subsequent provision that such moieties should not inure to the benefit of the other road is a declaration of the policy of Congress on this subject. The discussion of this question by Mr. Lamar seems to be conclusive. (Rec., p. 171.)

III.

The title to the lands in controversy never having been conveyed by Iowa to appellant never vested in appellant.

Appellant contends, under its third proposition (Brief, p. 59 *et seq.*), that it acquired a title to the lands patented to the State.

The following cases are cited in the brief:

Bybee v. *Oregon and Cal. Ry. Co.*, 139 U. S., 663.
Van Wyck v. *Knevals*, 106 U. S., 360.
State of Kansas v. *Southern Kansas Ry. Co.*, 24 F. R., 179.
Wisconsin Central Ry. Co. v. *Price County*, 133 U. S., 496.
Deseret Land Co. v. *Tarpey*, 142 U. S., 241.
St. Paul and Pacific Ry. Co. v. *Northern Pacific Ry. Co.*, 139 U. S., 1, 6.
Curtner v. *United States*, 149 U. S., 662, 675.
Denny v. *Dodson*, 32 F. R., 899, 901–4.

In all of these cases the contest was between the grantee and third parties, and the United States was not questioning the title, and besides, in each instance, the grants or patents were direct to the company. The legal title had passed to the railroad company either by grant or patent.

In the case at bar the grant was to the State of Iowa, subject to the disposal of its legislature, and whether the lands passed by the grant or by patent to Iowa, and whether or not patents were essential to pass title to the State, makes no difference, for no title to these lands ever passed to appellant.

In *Schulenberg* v. *Harriman* (21 Wallace, 59), upon a grant made in similar terms to those in this case, and upon an act of Wisconsin transferring the rights received

under the act of Congress to a railroad company similar to that of Iowa of April 3, and much broader than the one of April 20, this court held that the title was in the State as trustee, and not in the railroad company, and that the intention of the State would be looked to in determining whether or not the title passed to the railroad company.

Similar acts of the State of Iowa have been construed by the supreme court of that State, and it was held that the railroad acquired no legal title until the governor issued a patent or certificate. (*McGregor and M. R. R. Co.* v. *Brown*, 39 Iowa, 655; *Sioux City and St. Paul R. R. Co.* v. *Osceola County*, 43 Iowa, 321; *Lake Superior, etc.*, v. *Cunningham*, 155 U. S., 372.)

Under a similar grant and legislative action vesting title in the railroad company subject to forfeiture, this court held: Where land and franchises are thus held, any public assertion by legislative act of the ownership of the State after default by the grantee, such as an act resuming control of them and appropriating them to particular uses or granting them to others to carry out the original object, will be effectual and operative. (*Farnsworth* v. *M. and P. R. R. Co.*, 92 U. S., 66.)

The State of Iowa has declared appellant's rights forfeited as to all unearned lands and that the United States is the owner of same.

IV.

Appellant never having acquired title to these lands and having abandoned the contract can not set up, even defensively, any right to them.

If the Government should concede that the proper construction of the act of May 12, 1864, is such that appellant might have legally, as the work progressed, received from Iowa 100 sections of land for each 10 consecutive miles completed, taken at random from the grant, and this also in respect of the 10 miles constructed in the common territory, and that in this way appellant might have gotten the title to more land than it actually did get, including the land in controversy, nevertheless it is insisted—the facts being that appellant did not get a title to this land, and did not complete the road, and can not complete it, the time having expired by its default, and that the State of Iowa, the trustee under the act and the holder of the legal title, has never conveyed these lands to appellant—that appellant can not assert any valid right to said lands in law or equity; and inasmuch as it is so doing, the bill is properly filed to settle the title of the Government.

The case with the concessions made for argument stands thus: An entire work was to be done for a round sum. Under the system providing for partial payments it was possible for the contractor to require installments as the work progressed, and in such a ratio as would exhaust the contract price before the completion of the work. These partial payments were not absolute payments in discharge of the work done, but they were on the entire work and in excess of the proportional value of the part performed.

It so happens that as the work progressed the contractor, without fault of the other party, did not, as he might have done, get the full partial payments.

Not on this ground, but because it would be onerous to finish the contract, and because he arbitrarily assumes that

the other party did not want what was contracted for, he permits the time within which he was to complete the contract to expire, and puts it out of his power to perform his part, and then claims that he is entitled to the balance of the stipulated pro rata payments for the work done, thus seeking after abandonment to enforce, for a part performance, payments which would cover the whole contract price for the entire work.

Add to this the facts that the contract price was a donation to secure a public benefit, that the contractor was in possession of the work, owning it, and so the question of acceptance or rejection by the other party could not arise, that the consideration was land conveyed to a trustee who refuses to convey a part of the same to the contractor, who has abandoned the contract, but conveyed the same to the donor, and that the contractor is claiming a title to this land, and we have the case at bar. The grant was to aid in the construction of the entire road and not merely a portion of it. This was held in a case where lands coterminous with completed sections were by the express terms of the statute to be patented. (*United States* v. *Burlington, etc., R. R. Co.*, 98 U. S., 340.)

The map of location was required to be filed for the entire road. (*Cedar Rapids R. R. Co.* v. *Herring*, 110 U. S., 41.) It was so filed.

The acceptance of the grant was a contract to construct the entire road.

The title to the land is in the State of Iowa. (*Lake Superior, etc.*, v. *Cunningham*, 155 U. S., 372.) The bill avers this and the answer does not deny it. (Rec., p. 6.)

No grant was made to appellant. The grant was to Iowa "subject to the disposal of the legislature of Iowa for the purposes aforesaid, and no other." (Rec., p. 11.)

The lands were to be "disposed of by said State for the purposes aforesaid." (Rec., p. 12.)

The patents were to issue to the State for the benefit of the road. (Rec., p. 13.) At the completion no patents were to be made to the roads, but "to the State for the uses aforesaid and none other." (Rec., p. 13.)

And "should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of aforesaid shall revert to the United States." (Rec., p. 13.)

The railroad was not a party to the grant. The State was made trustee, with sole power of disposition, in accordance with the terms of the act. No road could acquire any specific right in any land. The State might have sold the lands and never certified any to the roads, and might have constructed the roads with the proceeds. The trustee remained the same, but the beneficiary might be changed, as was done in respect of the McGregor road, the State declaring a forfeiture.

By the terms of the act they were to revert to the United States after fifteen years, and the time has elapsed.

Appellant contends (Brief, pp. 40, 41) that the title to all of these lands vested in it, or Iowa, as its trustee, upon the definite location of the road.

Grant that the title was in the trustee; it was subject to the powers given to the trustee and the conditions of the trust, and no conveyance in violation of the trust would

have been valid. (*Schulenberg* v. *Harriman*, 21 Wall., 44; *Farnsworth et al.* v. *M. and P. R. R.*, 92 U. S., 65; *Lake Superior, etc.*, v. *Cunningham*, 155 U. S., 373.)

The trustee has reconveyed the unearned lands by legislative act to the United States. It had the power and its action is conclusive. (*Angle* v. *C. and St. P. R. R.*, 151 U. S., 19.)

Whatever right appellant may have had while the work was in progress, and before the period for completion elapsed, to obtain partial payments, and while it was carrying out the contract in apparent good faith, such right ceased when it became fixed by its own conduct that the work could not be completed.

The adjustment of the relations of the parties then became subject to rules of law which would not permit one on an abandoned contract to stand upon the letter as to partial payments intended to apply to a contract being performed in good faith.

It is not a case of forfeiture or to divest title, but whether one who has broken a contract which was an entirety can, when fulfillment is impossible, recover on a *quantum meruit*, there being no question of acceptance of the work.

It may be said that appellant is not seeking such recovery and is not invoking the active aid of the court. The governing principle is the same. It is asserting title to and has clouded the title to lands which it claims on a *quantum meruit*. If it have no such title, and could not set up its claim legally to acquire the lands, it can not set it up by way of defense to vindicate its assertion of ownership.

V.

The trustees are not innocent purchasers for value and without notice.

The trustees under the mortgages from the Sioux City Company were affected with notice of the conditions in the act of Congress and of the power vested in the trustee.

They are not in the position of innocent purchasers for value and without notice, and they stand in the shoes of their mortgagor.

It is provided in section 4 of the act of May 12, 1864 (Rec., p. 13), "that said lands shall not in any manner be disposed of or encumbered except as the same are patented under the provisions of this act; and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States."

Lands to which the title vested in violation of the act in the railroad company could not be encumbered. Much less could those be encumbered to which the railroad company never acquired any title. The title to these lands was held by the State, and was not affected with any specific lien in favor of these bondholders and could not be; and the State having transferred the title to the Government, her transfer passes an unencumbered estate. (*Chamberlain* v. *St. Paul, etc., R. R. Co. et al.*, 92 U. S., 306.) The first mortgage was made in August, 1871, before any of the lands were patented to the State of Iowa, and therefore only an equitable title passed, and the question of innocent purchaser could not arise. (*Vattier* v. *Hinde*, 7 P., 273.) The second mortgage was made in

1884, which was two years after the State of Iowa had declared all right to these lands forfeited.

That the legal title vested in the State was adjudicated at the instance of appellant seeking to avoid taxes, in the case of *Sioux City and St. Paul R. R. Co.* v. *Osceola County* (43 Iowa, 321).

The affirmative defense of innocent purchaser for value is set up for the bondholders in the answer, and should have been sustained by evidence; but there is no proof whatever, and nothing in the stipulation bearing upon this defense.

The cases of *United States* v. *Burlington, etc., R. R.* (98 U. S., 342) and *United States* v. *California, etc., Land Co.* (148 U. S., 41), cited in appellant's brief, page 127, are not in point, for in both of those cases the question was one of setting aside patents under which title had passed as against innocent purchasers who had acquired the legal title; but in this case the legal title never passed, either to the railroad company or the trustees.

VI.

The contract being an entirety, appellant, having gotten title to more lands than it earned, can not, after abandoning the contract without completion, in the absence of legal title, assert any interest in lands to which it might have acquired legal title in partial payments so long as it holds on to the lands taken in lieu.

This question is treated on page 122 of appellant's brief. The argument goes on the theory that appellant has the legal title to these lands and that the Government is seek-

ing to cancel patents to the company and without identification of the lands. Such were the cases of *United States* v. *Burlington Railroad Company* (98 U. S., 342); *Kansas City Railroad* v. *Attorney-General* (118 U. S., 695), and *United States* v. *Budd* (144 U. S., 161), which are cited in the brief.

In all of them the title to the lands had vested in the companies by patents, and it was sought to cancel the patents.

This bill does not seek to cancel the patents to the lands which appellant has gotten, but to hold that the taking of these voluntarily and to the full amount of its earnings satisfied, taking the contract as an entirety, any equity it might have in the lands in dispute.

Appellant would in equity have to offer to restore the lands it has gotten in lieu before it can be heard to assert title to the lands in controversy. It has sold all of the lands it has received and has put it out of its power to restore them.

J. M. DICKINSON,
Assistant Attorney-General.

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JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1894.

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY,
Appellant,
vs.
THE UNITED STATES,
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Appeal from the Circuit Court of the United States for the Northern District of Iowa, Western Division.

Brief Filed on Behalf Appellee by Wm. L. Joy, Counsel for Settlers.

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Appeal from the Circuit Court of the United States for the Northern District of Iowa, Western Division.

Brief Filed on Behalf Appellee by Wm. L. Joy, Counsel for Settlers.

STATEMENT OF CASE.

The rights of the parties to this action are based upon the Federal Land Grant, approved May 19, 1864. (See Exhibit I, page 11 of record.)

Paragraph 1 of said act provides: "That there be and is hereby granted to the State of Iowa for the purpose of aiding in the construction of the railroad from Sioux City in said State to the south line of the State of Minnesota * * * * every alternate section of land designated by odd numbers,

for ten (10) sections in width on each side of said road," and in the same section it is provided that lands may be selected from the odd numbered sections of the public lands of the United States nearest to the tiers of sections above specified, to an amount equal to as much land as may be found upon the location of the road to have been in any manner sold, reserved or otherwise disposed of by the United States within the ten (10) section limits, provided, "that the lands so selected shall in no case be located more than twenty (20) miles from the line of said road." A like grant is made in said section to the State of Iowa for the benefit of the McGregor Western Railroad, the two roads being required to intersect in the County of O'Brien.

Paragraph 3 of this act provides that the lands thereby granted, shall be subject to the disposal of the Legislature of Iowa for the purposes aforesaid only.

Paragraph 4 provides "that the lands hereby granted shall be disposed of by said State for the purposes aforesaid only in manner following, viz.: when the Governor of said State shall certify to the Secretary of the Interior that any section of ten (10) consecutive miles of either of said roads is completed in a good, substantial, and workmanlike manner, as a first-class railroad, then the Secretary of the Interior shall issue to the State patents for one hundred (100) sections of land, for the benefit of the road having completed the ten (10) consecutive miles as aforesaid * * * * and when certificates of completion of additional sections of ten (10) consecutive miles of either of said roads are from time to time made as aforesaid, additional sections of land shall be patented as aforesaid, until said roads, or either of them, are complete, when the whole of the lands hereby granted shall be patented to the State for the uses and purposes aforesaid, and none other * * * * provided further,

that if the said roads are not completed within ten (10) years from their several acceptances of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa, for the purpose of securing the completion of said road within not to exceed five (5) years after such time, and upon such terms as the State shall determine. And provided further, that said lands shall not in any manner be disposed of or incumbered, except as the same are patented under the provisions of this act; and should the State fail to complete said road within five (5) years after the ten (10) years aforesaid, then the said lands undisposed of as aforesaid, shall revert to the United States."

The State of Iowa accepted this grant and conferred its benefits upon the Sioux City & St. Paul Railroad Company, by act of its Legislature, approved April 20, 1866. (See Exhibit 3, page 16 of record.)

Paragraph 2 of Exhibit 3 provides that the lands to which the Company may become entitled by virtue of said act of Congress shall be deeded to said Railroad Company as shall be ordered by the Legislature of the State of Iowa, at its next regular session, or any session thereafter.

The Sioux City & St. Paul Railroad Company accepted the grant, on the 19th day of September, 1866, and on the 2nd day of April, 1867, located its line of road from Sioux City to the south line of the State of Minnesota, and filed a map of location in the General Land Office of the United States, on the 17th day of July, 1867. In August of the same year the Commissioner of the General Land Office of the United States transmitted to the Register and Receiver of the Land Office at Sioux City, Iowa, a map showing the original location of said line of road, together with the ten (10) and twenty (20) mile limits defined thereon. Said map was accompanied by a letter to the local Land Office withdrawing all of the

odd sections of lands within ten (10) and twenty (20) mile limits from entry or sale. In the year 1869 the Sioux City & St. Paul Railroad Company made and filed in the United States Land Office, at Sioux City, selections of all the lands undisposed of in odd numbered sections embraced within the place and indemnity limits of said grant. (See paragraph 52, "Agreed Statement of Facts," page 61 of record.) All these selections were approved by the Secretary of the Interior and embraced only 407,870.21 acres.

That the length of the located line of the road from Sioux City to Minnesota State line, as shown by the survey of 1866, is 83 miles and 52 rods. (See Exhibit 6 of record.)

In 1872 the Sioux City & St. Paul Railroad Company commenced construction of the railroad from the south line of the State of Minnesota, and built the same to LeMars, Iowa, a distance of 56.13 miles, and built 1.1 mile of track in Sioux City, but have never constructed a road from LeMars to Sioux City, a distance of 25 miles. (See paragraph 27, "Stipulation of Facts," page 54 of record.)

In July and August, 1872, and November of 1873, the Governor of Iowa made and filed with the Secretary of the Interior, certificates showing the construction of five (5) sections of ten (10) consecutive miles each of said road. Between the 16th day of October, 1872, and the 25th day of January, 1875, the Secretary of the Interior caused patents to issue to the State of Iowa for all the lands in the place and indemnity limits which would inure to the company upon construction of the said road under said grant—407,870.21 acres in all.

In 1877, a patent was issued for a quarter section of land under the provisions of the act of 1875, authorizing the exchange with the settlers in possession of any tract. The

Governor of Iowa caused deeds to issue to the Sioux City & St. Paul Railroad Company, for 322,419.81 acres of land embraced within the place and indemnity limits.

In 1879, an action was commenced in the United States Circuit Court of Iowa, by the Chicago, Milwaukee & St. Paul Railway Company, successors to the McGregor Western Railroad Company, against the Sioux City & St. Paul Railroad Company, in which suit it was determined that the grant for the construction of the two roads within the over-lapping limits was a grant in common and that each company took thereby an equal, undivided moiety.

See *Sioux City & St. Paul R. R. Co. vs. C., M. & St. Paul R. R. Co.*, 117 U. S., page 406.

The decree of partition entered therein set apart to the Milwaukee company of the aforesaid 407,870.21 acres patented to the State of Iowa, as aforesaid, 79,435.41 acres of which 41,687.52 acres had been deeded by the State to the Sioux City & St. Paul Railroad Company. Of the lands deeded to the Sioux City & St. Paul Railroad Company by the State, there remained after deducting those set apart to the Milwaukee Railroad Company, under said decree, 280,725.29 acres, its title to which has never been disputed, and the lands have been sold and conveyed to third persons. The remainder of the lands set apart by the decree to the Milwaukee Company have been, by the State of Iowa, deeded to that company, and the lands in Woodbury and Plymouth Counties embraced within the grant have been released to the United States, pursuant to an act of the Legislature of the State of Iowa of 1884. (See Exhibit 31, page 212 of record.) So that there now remains of the 407,870.21 acres patented to the State of Iowa, only the lands specifically described in paragraph 21 of Complainant's Bill, which have never been in

any manner disposed of by the State. A portion of these lands lie within the place and the balance within the indemnity limits of the located line of the Sioux City & St. Paul Railroad. Upon an adjustment of the grants the Sioux City &.St. Paul Railroad Company is entitled to such portion of the lands actually covered by the grant as the number of miles of road constructed bears to the total length of the located line from Sioux City to the southern boundary of Minnesota. The Company has already received far more land than it is entitled to.

The State of Iowa refused to convey to said Company the 800 acres in Dickinson County and 21,179.85 acres in O'Brien County, claiming that the Railroad Company had earned none of said lands. The time limited in the act of Congress of May 12, 1864, within which the State of Iowa was to cause the building of the said railroads named in the act, has long since passed and no further rights to the lands under that grant can be hereafter acquired by any action on the part of the State or Railway Company.

The bill in this case was filed under the provisions of the act of Congress of March, 1887, providing for the adjustment of land grants made in aid of the construction of railways and the forfeiture of unearned lands. The complainant in said bill, among other things, claimed that the lands not deeded to the Railway Company had not been earned by reason of the failure of said Company to construct its road from LeMars to Sioux City, and that the lands should revert to the United States.

On the 7th day of October, 1890, this case was tried before the Hon. O. P. Shiras, presiding in the United States Circuit Court, for the Northern District of Iowa, Western Division; and on the 20th day of October, 1890, there was filed in the office of the Clerk of said court, the opinion of

the court, found in this record, commencing on page 251; and afterward, on the 18th day of December, 1890, during the said October term, a decree was entered in said case establishing and quieting the title to the 800 acres in Dickinson County, and the 21,179.85 acres in O'Brien County, in said decree described in the United States as against the adverse claims of the Sioux City and St. Paul Railroad Company, Elias F. Drake and Amherst H. Wilder, Trustees, from which decree the Sioux City & St. Paul Railroad Company, Elias F. Drake and Amherst H. Wilder, Trustees, appealed to this court.

On page 61 of the record, in paragraph 51, it is stipulated that Exhibit 35, found on page 248 of the record, shows the land in controversy now claimed and occupied by actual settlers under the pre-emption and homestead laws of the United States. By this exhibit and stipulation it appears that about one hundred (100) settlers, between 1882 and 1885, entered upon said land, which has not been deeded to the Sioux City & St. Paul Railroad Company, and applied at the United States Land Office at Des Moines, Iowa, to enter the same, under the pre-emption and homestead laws of the United States. Their applications were rejected and appeals taken from the decisions of the Register and Receiver of the local Land Office to the General Land Office. That the said parties have, ever since, continued to cultivate and improve said lands, under said claims, and in some instances have made large and valuable improvements thereon, and claim the right to enter the same, under the land laws of the United States.

By permission of the court and counsel for the United States, we were permitted to appear in the Circuit Court in behalf of the settlers upon said lands and make an argument in support of the claim of the United States to the said lands. Relying upon the indulgence of this court and courtesy of

the counsel representing the United States, we file this argument in behalf of the settlers upon said lands, resisting the claim of the Railroad Company to the same, and urging that they be decreed to be government lands, subject to entry by the said claimants, under the land laws of the United States.

ARGUMENT.

The rights of the parties in this litigation are dependent upon the construction of the Land Grant Act of May 12, 1864. Under it appellant claims title to all the lands embraced within the grant. This the complainant in the court below, appellee here, denies, and claims the failure to build the railroad from LeMars to Sioux City defeats appellant's claim to the undeeded lands, and entitles the appellee to a forfeiture of all rights to the unearned lands embraced within the grant.

The Land Grant Act of May 12, 1864, is one of that large class of land grants so often construed by this court and held to be grants *in pressenti* subject to be defeated only by the failure of the company constructing the road to comply with the terms and conditions of the grant. These grants are held also to be laws as well as contracts.

In *Schulenberg et al. vs. Herriman*, 21 Wallace, 44, this court construing one of these grants says: "A legislative grant operates as a law as well as a transfer of property and has such force as the intent of the Legislature requires.

Mo. Pacific R. Co. vs. Kansas Pac. R. Co., 97 U. S., 491.

Farnsworth et al. vs. Minn. & Pacific Railroad Company, 92 U. S., 49.

Chamberlain vs. St. Paul & Sioux City Railroad Company, 92 U. S., 299.

The first section of the act (Exhibit 1, page 11 of record) makes the entire grant. The remaining sections of the act add nothing to what is there granted. Its provisions are that for the purpose of securing the construction of the railroad from Sioux City to the north line of the State of Iowa, and another from McGregor westward to the point of intersection with the first named road, in the County of O'Brien, all the alternate sections of land for ten miles in width on either side of said roads which shall be found undisposed of at the date of their respective locations, are granted, and in place of the odd numbered sections that may have been disposed of at the time of the location of the respective roads, an equal quantity may be selected from the odd numbered sections nearest to the tier of sections above specified, provided it can be found within the further limit of ten miles. If the lands are not found within the prescribed limits sufficient to make ten sections per mile, for the entire line of road, what is found within the limits of the grant is all that can pass to the railroad company constructing the road upon a full compliance with the terms of the grant. This is all the government undertook or intended to convey to aid in the construction of the road. Such are the plain provisions of the act.

Section 1 of the act grants ten sections per mile, provided the odd numbered sections applicable to the grant can be found within the granted and indemnity limits. Section 4 of the act provides the conditions upon which the land shall be patented to the State. When the Governor certifies that ten consecutive miles of road have been completed in the manner provided in this section, the Secretary of the Interior is directed to patent to the State one hundred sections of land. These certificates are to be made from time to time for the

entire line of road as each consecutive ten miles is completed, and one hundred sections are to be patented to the State for the last ten miles constructed as well as for the first. It is evident that if the lands are not found within the grant this cannot be done. Only the amount due for the construction of each consecutive ten miles, as determined by the amount of land found within the grant, can be patented.

The section providing for the patenting of the land granted adds nothing to the grant, but simply provides for the carrying into effect the grant made by the first section. It follows if the ten sections per mile are not found within the grant it cannot be patented to the State, and Congress did not intend that it should be.

The proviso of the granting clause "if found within the limits of the grant," applies to all of the sections providing for the patenting and disposition of the lands embraced within the grant. In this way only can the intent of Congress be carried out.

The language used in section 4 provides for the patenting of the land in a full grant of ten sections per mile. The grant is for the construction of a line of road from Sioux City to the north State line of Iowa. If the land found within the grant is not sufficient to make ten sections per mile for the entire line of road, the Company constructing the road can receive only the number of acres per mile found within the grant. In this way only can the aid furnished by the act be applied to the construction of the entire line of road.

This court held, in *Monona & St. Peter Railroad Co. vs. Barney*, 113 U. S., 618, construing the provisions of the land grants in question in that case, that "they are to receive such a construction as will carry out the intent of Congress, however difficult it might be, to give full effect to the language

used if the grants were by instruments or private conveyance. To ascertain that intent we must look to the condition of the country when the acts were passed, as well as to the purpose declared on their face, and read all parts of them together."

M., K. & T. R. R. Co. vs. K. P. R. R. Co., 97 U. S., page 491.

Determined by the rule here announced, the court will not give a technical construction to any of the provisions of the act that will defeat the intent of Congress in making the grant, but will so construe and read the whole act together as to carry into effect the provisions of the grant.

The railroad company accepting the grant took it with full knowledge of the limitation contained in the granting clause, and undertook to construct the entire line of road for the amount of land applicable to the grant. Such the language of the act of the Legislature conferring the grant and the Company's acceptance of the same clearly indicate. Upon a full compliance on the part of Railroad Company with all the terms of the act, the State could deed to the Company only the lands earned by reason of the road constructed. More than this the Company cannot lawfully claim or the State deed.

The provisions of section 4 for patenting land as the construction of the road progresses do not determine the amount to which the Company, upon a final adjustment of the grant, is entitled to. That is determined by the number of miles of constructed road and the amount of land found within the grant, and not by the manner in which installments of lands are conveyed. On final adjustment, if only a part of the line of road has been built, the State can only convey a proportionate share of the lands granted. Such is the plain intent of the act.

The length of the line of road between Sioux City and the north State line of Iowa, as shown by the map of definite location (Exhibit 6, page 19 of record), is 83 miles and 52 rods. The appellant Company claims only to have constructed 56.13 miles of road, commencing on the north State line of Iowa and extending to LeMars in said State, and 1.1 miles in Sioux City. The 25 miles of located line between LeMars and Sioux City has not been built. (Paragraph 27, page 54 of record.)

That the 25 miles is a part of the line to aid in the construction of which the land grant was made is unquestioned, and the question presented by the record is: *Can appellant Company, in a court of equity, obtain all the lands embraced in the grant for building a part of the road; or, in other words, does a partial compliance with the terms of the grant on its part entitle it to all the benefits of the act?*

In a controversy between individuals such a claim would not be made in a court of equity. No man standing upon a broken contract, which he does not now and never did intend to perform, would come before this tribunal and ask the court to assist him in appropriating that he had not earned.

In *United States vs. The Central Pacific Railroad Company*, 118 U. S., 238, it is held that it is well settled that the acceptance by a railroad company of a land grant constitutes a contract by it with the United States, to construct a road as required by the granting act.

Construing land grants similar to the one under consideration, the Land Department has frequently held that the grant is made to aid in the construction of the entire line of road, and not a portion of it.

The act of Congress of March 3, 1863, made a land grant in aid of the Leavenworth, Lawrence & Galveston R. R. Co.

It constructed all its main line of road except the portion from Leavenworth to Lawrence. It claimed indemnity lands for the portion constructed. October 8, 1874, the Commissioner of the General Land Office held the Company not entitled to indemnity lands because the whole road was not completed. This holding was affirmed by the Secretary of the Interior in his letter of May 2, 1878, in which he says: "It has been fully determined that the L. L. & G. R. R. Co. is not entitled to any lands in its indemnity limits."

Attorney-General Williams, speaking of the land grant act of May 12, 1864 (14th Op., 160), says: "Certainly it was not contemplated that the grant for the benefit of either road should be exhausted while a large portion of such road should remain to be constructed." The Attorney-General, February 2, 1880 (16th Op., 463), said: "That to entitle the State to the benefit of the land granted, it is necessary that the road be constructed according to the line of definite location."

This court has announced the same doctrine. In the *United States vs. B. & M. R. R. Co.*, 98 U. S., 340, it is held "the grant was made to aid in the construction of the entire line of road, and not merely a portion of it."

The failure of the Railroad Company to complete the entire line of road for which the grant was made is a breach of a condition subsequent for which a forfeiture may be declared.

Section 4 of the act under which appellant claims, expressly provides that in case the roads are not completed within ten years from their acceptance of the grant, the lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the road within five years from that date, and in case the State fails to complete the road within five years after the ten years aforesaid, then the lands undisposed of, as aforesaid, shall revert to the United States.

The courts have repeatedly held that a forfeiture may be asserted for a failure on the part of the company to comply with the terms of the grant.

In *Railroad Land Co. vs. Courtright*, 21 Wallace, 316, it is held that the conditions as to completion of the road imposed by the State are conditions subsequent.

In *Van Wyck vs. Knevals*, 106 U. S., 368, the court says: "If the whole of the proposed road has not been completed, any forfeiture consequent thereon can be asserted only by the grantor—the United States—through judicial decisions or through the action of Congress.

Grinnell vs. the C., R. I. & P. R. R. Co., 103 U. S., 739.

Schulenberg vs. Herriman, 21 Wallace, 44.

In *St. Louis, Etc., Ry. Co. vs. McGee*, 115 U. S., 469, it is held: "It has often been decided that lands granted by Congress to aid in the construction of railroads do not revert, for condition broken, until a forfeiture has been asserted by the United States, either through judicial proceeding instituted under authority of law for that purpose, or through some legislative action legally equivalent to the judgment of office found at common law."

Franconer vs. Newhouse, 40 Fed. Rep., 618.

United States vs. Repentingny, 5 Wallace, 211.

M'Micken vs. United States, 97 U. S., 217.

Farnsworth vs. the Minn. & Pacific R. R. Co., 92 U. S., 49.

United States vs. Northern Pacific R. R. Co., 41 Fed. Rep., 842.

It is no longer an open question under the decisions of this court that a forfeiture may be decreed for a failure to construct the road in accordance with the terms of the grant.

The unearned lands embraced within the grant revert to the United States under the assertion of forfeiture by judicial proceedings.

So section 4 of the act making the grant expressly provides. Upon failure of the Railroad Company and State to construct the road within fifteen years from the date of the acceptance of the grant, the land undisposed of—that which the State has not conveyed to the Railroad Company for road already constructed—reverts to the United States. Such is the plain intent of the act.

The next inquiry is, *how much land reverts to the United States under a decree of forfeiture?*

There has been patented to the State of Iowa, in the place and indemnity limits of the grant, 407,870.21 acres. The State has deeded to appellant Company of said lands, 322,412.81 acres. In 1879 an action was commenced in the United States Circuit Court for Iowa, by the Chicago, Milwaukee & St. Paul Ry. Co., against the appellant Company, in which case it was determined that the grant in question, for the construction of the two roads, was within the over-lapping limits, a grant in common, and that each company took thereby an equal undivided moiety.

Sioux City & St. Paul R. R. Co. vs. C., M. & St. P. Ry. Co., 117 U. S., 406.

A decree in partition was entered therein setting apart to the C., M. & St. Paul Ry. Co. of the aforesaid 407,870.21 acres patented to the State of Iowa, as aforesaid, 79,435.41 acres, of which 41,687.52 acres had been deeded by the State to the appellant Company. There remains of the 322,412.81 acres of land patented to the State, after deducting those set apart to the C., M. & St. P. Ry. Co., 41,687.52 acres, 280,725.29 acres which had been deeded by the State to the appel-

lant Company. The entire amount that would inure to the Company upon the construction of the 83 miles of road is 407,870.21 acres, less amount set apart to the Milwaukee Co., 79,435.41 acres, being only 328,434.80 acres, or 3,957.04 acres per mile. The amount earned by construction of the 56 miles is 221,594.24 acres, and if the appellant Company is credited with 1 mile constructed in Sioux City, making 57 miles, the total amount earned is 225,551.28 acres, which, deducted from the amount patented, shows the appellant Company to have received 54,174.01 acres more land than it is entitled to by reason of constructed road. This excess the government does not seek to recover. The remaining lands set apart by the decree to the C., M. & St. P. Ry. Co. have been by the State deeded to that company. The lands in Woodbury and Plymouth Counties embraced within the grants, amounting to 26,017.33 acres, have been released to the United States pursuant to the act of the legislature of 1884, so that there now remains undisposed of, of the 407,-870.21 acres patented to the State of Iowa, only the lands specifically described in paragraph 21 of appellee's bill, 800 acres in Dickinson County and 21,179.85 acres in O'Brien County, which has never been, in any manner, disposed of by the State. A portion of these lands, 15,251.09 acres, lie within the place, and the balance within the indemnity limits of the located line of railroad. All of these lands revert to the United States upon forfeiture decreed.

When the indemnity lands are selected and the selections approved by the Secretary of the Interior, they are set apart for the construction of the road.

Cedar Rapids R. R. vs. Herring, 110 U. S., 27.
Sioux City & St. Paul R. R. vs. Chicago, Milwaukee & St. Paul R. R., 117 U. S., 406.
United States vs. M. O. R. R., 141 U. S., 353.

As to the lands in the place limits, they pass under the grant upon the definite location of the line of road. Then the location becomes certain, and the title, which was previously imperfect, acquired precision and became attached to the land.

B. & M. R. R. R. Co. vs. Fremont Co., 9 Wallace, 94.
H. & St. Joe R. R. Co. vs. Smith, 9 Wallace, 96.
K. P. R. R. Co. vs. Dinmeyer, 113 U. S., 629.
Van Wyck vs. Knevals, 106 U. S., 360.

The lands thus ascertained inure to the grant and may be conveyed by the State to the Railroad Company in payment for road constructed, irrespective of whether the lands are within the place or indemnity limits, and there is no reason why more place lands should be deeded to the Company for the construction of the first ten miles than for the building of the last. The State, as Trustee, holds both the place and indemnity lands in the same manner and for the same purpose, and the Governor may deed to the Company, when the legislature so directs, lands from both limits. For a partial construction of the road, upon an equitable adjustment of the grant, appellant Company would not be entitled to take all of the lands from the place limits for the building of a part of the road. These lands situated nearest the constructed line of road are the more valuable, and it would be neither equitable nor just to allow appellant Company to take all the more valuable lands for a portion of the road constructed; hence, we urge that appellant's claim to the undeeded lands in the place limits is unfounded. It selected, demanded, received and appropriated to its own use both lands in the place and indemnity limits, both classes of which had been patented to the State, and were applicable for the purposes of the grant; and while it and its grants retain the indemnity lands, it is in no position to assert a claim to the place lands not conveyed.

By appropriating to its use the lands thus conveyed from the indemnity limits, it is now estopped from claiming the undeeded lands in the granted limits.

In *Hough vs. Buchanan*, 27th Fed. Rep., 328, it is held "where under the act of Congress approved May 15, 1856, granting certain lands to the State of Iowa, to aid in the construction of railroads, the lands were selected and claimed as indemnity lands by the State and the United States had conveyed the title to the Railroad Company, which became a purchaser for value. Such action on the part of the State defeats its right to subsequently claim the same lands under the Swamp Land Act of 1850."

The court says by the railroad land grant of 1856, "the State became entitled to the alternate sections within six miles of certain proposed lines of railway, with the right to select within the limit of fifteen miles, lands to make up any deficiency within the six mile limit caused by the previous disposition of the lands by the United States. The State, through its agent lawfully appointed, selected the lands in controversy in 1856 as part of the indemnity lands to which the Dubuque & Pacific Railway Company was entitled, and the same were duly certified by the Secretary of the Interior, thus in effect patenting them to the Railroad Company by order and direction of the State. When this was done, to-wit, in 1856, Pocahontas County was not organized, nor had it acquired any vested right in the swamp lands within its borders. It was not a purchaser for value and the State could, by legislative enactment, have changed the disposition of the lands at any time before the organization of the county and the completion of the title therein. When, therefore, the lands were selected by the State and claimed as indemnity lands under the railway grant, the United States had conveyed the same to the Railroad Company. Did not such

action on the part of the State defeat its right to subsequently claim the lands under the Swamp Land Grant? The Railroad Company was a purchaser for value in that it had agreed in consideration of receiving the quantity of land specified in the act of 1856, to construct a line of railway from Dubuque to Sioux City. After procuring a conveyance of these lands to the Railroad Company, it would be most unjust to permit the State to assert a right to the same lands under the Swamp Land Act."

In the case of the *Pacific Railroad, Appellant, vs. Lindell Heirs*, 39th Mo., 331, it is held where it appears "that the agent of the corporation and the State proceed to perform the duties assigned to him under these laws and finding to his satisfaction and by official communication from the Commissioner of the General Land Office that these particular sections and parts of sections among other lands in St. Louis County had already been disposed of within the meaning of the act of Congress, and were not a part of the granted premises, he selected and made a list of other lands elsewhere in lieu thereof, which had the approval of the Secretary of the Interior; and it was afterwards discovered, it seems, that some of those other lands so selected elsewhere were not subject to location and sale under an act of Congress, and when upon the necessary corrections being made, there still remained a certain portion of the whole quantity granted to be selected and located in some other place within the limits prescribed by the act. It does not appear, however, that the lands in controversy had ever been selected or located as a part of that residue. This action must be considered binding and conclusive upon all the parties as to that matter. It amounted to the solemn admission that these lands were not included in the grant and were included within the reservation, and it was a formal disclaimer on the part of the agent of all right to

select and locate them as a part of the granted premises. The officers of the Land Department may be considered as representing the interests of those who are entitled to this reservation on application. The defendants proceeded to consummate their equitable right into an actual patent for these lands. The admission was acted upon by all parties concerned. It is not important that the admission was not made to the defendants in person. Being an open and public act it is to be considered as addressed to every one who had occasion to act upon it. As against this party neither the agent nor the plaintiff can now be heard to deny the truth of this admission. Whether the facts are true or false, they are concluded by their own act and acceptance to say the truth, and it may very well be deemed to have amounted to an estoppal in *pais*."

In *State vs. Dent*, 18 Mo., 313, the Supreme Court of Missouri held that "where the Register and Receiver, under the advice and direction of the school commissioners appointed by the State, selected land in lieu of the sixteenth section granted by the act of March 6, 1820, for the use of schools, and where the land thus selected was sold under a law of the State on the petition of the inhabitants of the township and the money applied to the benefit of the schools in that township, it was held that the State and the inhabitants of the township were estopped from afterward claiming the sixteenth section."

On page 318 the court says: "We consider the government of the United States and the State of Missouri both bound by the location and selection of the land in Township 45 in lieu of the sixteenth section in Township 44, and that the effect of that selection and location was to satisfy the grant made to the State by the act of 1820."

Appellant Company acquired no rights or interest in the lands by reason of the Secretary of the Interior patenting all the lands to the State of Iowa prior to the time the Governor certified to the completion of each consecutive ten miles of the entire road, as required by the act making the grant.

The State of Iowa is Trustee and holds the lands patented for the purpose of carrying out the provisions of the grant. The lands could only be conveyed to the appellant Company by act of the State legislature; so section 2 of the act of the General Assembly of Iowa, approved April 20, 1866, expressly provides. (Exhibit 3, page 16 of record.)

The patenting of the lands to the Trustee conferred no right therein upon the appellant Company. Its right depended upon compliance with the conditions and requirements of the grant. Its claim to the lands, if it had constructed the road, would have been equally good whether the title thereto vested in the State of Iowa or remained in the United States. In either case if the lands had been earned its claim thereto would have been recognized and allowed. If the lands had been patented upon the certificate of the Governor as each consecutive ten miles of road was completed, as provided by the act making the grant, a strong presumption would arise that the Company had earned the lands applicable to the construction of that portion of the road; but when, as in this case, all the place and indemnity lands selected are patented to the State before the road is completed, no such presumption arises. The State simply held the title to the lands to deed to the Company as it constructed the road. The appellant Company neither gained nor lost any rights in the lands granted by reason of the Secretary of the Interior patenting the lands to the State. This was the manner provided for transferring the title to the Trustee. The rights of the appellant Company did not depend upon its ability to secure the

patenting of the land prior to the construction of the road. The legislature of the State of Iowa must be satisfied that the Company had complied with the conditions of the grant and authorize the Governor to deed the lands before the title passed from the State.

In the case of the *S. C. & St. P. R. R. Co. vs. Osceola County*, 43 Iowa, 321, the Supreme Court of Iowa held that until the State deeded the lands to the Railroad Company it acquired no title thereto although the lands had been patented to the State.

Pierce vs. the M. & N. R. R. Co., 1st Black., 379.

The act of the legislature of Iowa of March 13, 1874, did not convey title to the Railroad Company.

In the case of the *S. C. & St. P. R. R. Co. vs. Osceola Co.*, the Supreme Court of Iowa, in construing the act of March 12, 1874 (Exhibit 15, page 112 of record), held that no title was conveyed by the act. That until the Governor deeded the lands to the co npany the title remained in the State. Appellant Company could only obtain title by satisfying the State legislature that it had completed the road as required by the terms of the grant and acts of the State legislature. Upon such proof the legislature authorized the Governor to deed the lands. This the act of the legislature conferring the grant upon the Company required. The Governor of the State of Iowa could not certify that the road had been built, or the legislature find that the same had been done, and direct all the land deeded to the Company until the entire road had been completed. To have done so would have violated the terms of the trust and perpetrated a fraud upon the United States, and even had the Trustee deeded all the lands inuring to the grant for the construction of a part of the line of road, the act would have been unauthorized and illegal, and con-

ferred no rights upon the appellant Company, for the grants are laws as well as contracts, and conveyances in violation of the terms of the act are nullities.

Farnsworth vs. the Minn. & Pacific R. R. Co., 92 U. S., 65.

Jackson, L. & S. R. Co. vs. Davison, 37 N. W. Rep., 537.

Chamberlain vs. St. P. & S. C. R. Co., 92 U. S., 299.

Schulenberg et al. vs. Harriman, 21 Wallace, 59.

The Trustee, through its legislature, properly refused to authorize the undeeded lands conveyed to the Appellant Company for the reason that it had only constructed a part of the road to aid in the building of which the grant had been made. The Secretary of the Interior, in his letter to the Governor of Iowa, under date of February 6, 1883, demanded the restoration to the United States of the unearned lands of the grant. The act of the legislature of Iowa of March 16, 1882, declared all unearned lands resumed by the State of Iowa. (Exhibit 30, page 210 of record.) And by act of the legislature, approved March 27, 1884, relinquished to the United States all the lands resumed by the State. (Exhibit 31, page 212 of record.)

Section 1 of said act provides that all lands and rights to lands resumed and intended to be resumed, by chapter 107 of the acts of the Nineteenth General Assembly of the State of Iowa (Exhibit 30 of record), are hereby relinquished and conveyed to the United States.

Section 2 of said last named act directed the Governor of the State to reconvey all the said lands resumed to the United States, but provided that the provision of section 2 should not apply to the lands in Dickinson and O'Brien Counties,

the same being the lands claimed by the appellee in this suit and described in paragraph 21 of its bill of complaint.

Section 1 of said act relinquished to the United States all the right and title the State had in said lands, but by reason of the claim made by appellant Company the Governor was not authorized, in section 2 of the act, to reconvey these lands to the United States. From the action of the State legislature it is clear that the State, as Trustee, makes no claim to the undeeded lands, and expressly finds that appellant Company is not entitled thereto, but that they revert to the United States.

There are other conditions of the grant which appellant Company has not kept and performed, besides the failure to construct the entire line of road, which should be considered in determining the amount to which appellant Company is entitled upon an equitable adjustment of the grant.

Section 3 of the act of May 12, 1894, provides that the railroad shall be and remain a public highway for the use of the government of the United States, free of all toll and other charges upon the transportation of any property or troops of the United States.

Section 4 provides "that the United States mail shall be transported on said roads, and branch, under the direction of the Post Office Department, at such price as Congress may by law provide, provided that until such price is fixed by law the Postmaster General shall have power to fix the rate of compensation.

By the terms of the grant the road was to have been completed from Sioux City to the north State line of Iowa, and doubtless the transportation without charge of the property and troops of the United States and the carrying of the mails induced, largely, to the making of the grant. The rights

secured by the Government in these sections are very valuable, rights which by the acceptance of the grant appellant Company agreed to furnish for the entire line of road, and the failure to provide these facilities so clearly stipulated for in the act is a failure in a very material point to comply with the terms of the grant.

Appellant Company has shown bad faith in its failure to construct the entire line of road and in its attempt to appropriate the unearned lands.

By the terms of the act the road should have been constructed from Sioux City to the north State line, but most of the odd sections of land from Sioux City to LeMars, a distance of about 26 miles, had passed under a prior grant to the Dubuque & Pacific R. R. Co. for the building of a road from Dubuque to Sioux City. (See exhibit A, page 32 of record.) While from LeMars to the north State line but few of the lands within the limits of the grant had been sold or disposed of by the government prior to the definite location of the line of road. If the entire line had been constructed it would have been a matter of but little moment from which point the Company commenced the construction of the line of road. The State, as is evidenced by all the facts shown by the record, supposed appellant Company was acting in good faith and allowed the work to commence at the State line instead of at Sioux City, but when the Company refused to construct the road from LeMars to Sioux City and claimed all of the land embraced in the grant for the partial construction of the road, the object of the Company in commencing at the State line became apparent, as under the construction of the grant contended for by appellant Company it would, by this scheme, obtain all the lands of the grant for the construction of but a part of the line of road. But fortunately for the grantor the rights of the parties to this record are to be adjudicated

in a court of equity, where bad faith and sharp practices are not tolerated, and where such a construction will be given the act making the grant as will carry out the intention of Congress in making it.

The bondholders have no equities superior to Appellant Company in the lands of the grant.

Section 4 of the act of May 12, 1864, provides that the lands shall not in any manner be disposed of or incumbered, except as the same are patented under the provisions of this act. The language of the act is clear and explicit and expressly prohibits incumbering the lands before title is acquired by the Company. This court, in *Chamberlain vs. the St. P. & S. C. R. R. Co.*, 92 U. S., 299, has settled this question.

There are no innocent purchasers to protect. The incumbering of the property before it had been earned by the appellant Company was in violation of the terms of the act making the grant. Any act done in violation of its provisions is void, and in so far as the mortgage securing the bonds covered lands to which the appellant Company never obtained title, it is a nullity.

In reply to the position taken by counsel for appellant in their argument we urge that the cases cited do not hold—that the title to the lands embraced within the grant pass to the railroad company constructing the road without compliance on its part with the terms of the grant. In the case at bar by the terms of the act of the State legislature the title to the lands granted does not pass to the railroad company upon the certification by the Governor to the completion of each consecutive ten miles of road. The State legislature must, first, determine whether the Company has complied with the terms of the grant and authorize the Governor to deed the lands

before title vests in the railroad company. Until such deeds are made the title remains in the Trustee, the State of Iowa, for the purposes of the grant. So the Supreme Court of Iowa, construing the Federal and State statutes, in the case of *Sioux City & St. Paul R. R. Co. vs. Osceola County*, 43 Iowa, 321, held.

In this case the Appellant Company claimed for the purpose of avoiding the burdens of taxation that the title was in the Trustee, and for that reason the lands were not subject to taxation. The Supreme Court of Iowa in that opinion says: "It will be observed that the lands by this act are granted to the State of Iowa to be used and appropriated for the purpose prescribed. The act does not name or indicate a person or corporation to whom the State shall convey the lands. The State is to acquire title to the lands in the manner prescribed. Upon completion of sections of the road, patents are to be issued to the State for specific quantities of the lands. They cannot be disposed of or incumbered until the State acquires the full title by patent. The act contemplates the acquisition of the title by the State for the purposes prescribed. The State thus becomes Trustee, charged with the duty of appropriating the lands to the object contemplated by Congress in making the grant."

Tucker vs. Ferguson, 22 Wal., 527.

The State acquires no title and no part of the lands covered by the grant until the patent therefore, as provided by the act, issues. While a legislative act in the nature of a grant is effective to vest the title of lands in the grantee without further assurance (*Courtwright vs. C. R. & M. R. R. Co.*, 35 Iowa, 387,) yet if an act granting lands provides that the title shall pass upon the issuing of a patent, but withholds from the grantee rights inseparable from ownership, it

cannot be claimed that title is acquired under the grant in the absence of the patent provided for by the grant itself. We conclude, therefore, that the State acquired no title to the lands, or any part thereof, until the patent provided for by the act above was issued.

It will be observed that this statute is unlike the act of May 15, 1856, whereby Congress granted lands to the State to aid in the construction of certain railroads, which makes no provision for the issuing of patents to vest the title of lands thereby granted in the State.

In has been held, in *Courtwright vs. C. R. & M. R. R. Co.*, supra, "that the act last named operates without a patent to vest title in the State to the lands acquired thereby."

After referring to the acts of the State legislature accepting the grant and conferring the same upon appellant Company, the court says: "Under these statutes the plaintiff acquired its right and title in the lands in question in this action. Upon a performance of the terms and conditions prescribed in the first act plaintiff acquired a right to the land." These conditions, as we have said, pertain to the manner of the construction of the road, and its completion, as contemplated by the act of Congress making the grant. The act last named above (Exhibit 3, page 16 of record), provides that the General Assembly shall order the lands to be deeded to plaintiff. Such action, however, would only be had upon the legislature determining that the terms and conditions of the grant had been performed by the plaintiff. The action of the General Assembly, therefore, determines the question of plaintiff's right. A patent or conveyance from the State would vest in plaintiff the title to the lands, but without legislative action contemplated by chapter 144, acts Eleventh General Assembly, it could not issue. It is clear that without this legislative action determining that the

conditions of the grant had been performed, the lands did not become the property of the plaintiff.

Whether after such action a patent was necessary to pass the title, or whether such legislation would have had that effect without a patent, we need not inquire. The statutes are similar in their provisions to the acts interpreted in

Iowa Falls & Sioux City R. Co. vs. Cherokee County, 37 Iowa, 483;
Goodrich vs. Deaman, Id., 563;
Iowa Falls & Sioux City R. Co. vs. Woodbury County, et al., 23 Iowa, 498, and the
McGregor & M. R. R. Co. vs. Brown, 39 Iowa, 655.

In these cases we held that as the performance of the conditions annexed to the grant by the State was left to the determination of the Governor of the State, the railroad compani s acquired no property in the land granted until the Governor had issued a patent or certificate, as required by the statute, showing that the corporation had earned the lands by the completion of the road, or parts thereof, as prescribed by the conditions of the grant."

In the *McGregor & M. R. R. Co. vs. Brown*, 39 Ia., 655, the court, construing the same National and State acts, held the same doctrine as announced in the case above cited. After having obtained a decision holding that the Appellant Company received no title to the lands embraced within the grant until conveyed to it by the Governor of the State, and by reason thereof escaped the burdens of taxation attendant upon ownership, appellant, in a court of equity, should not be heard to question the correctness of this decision.

In *Schulenberg vs. Harriman*, supra, this court in construing a similar act, says: "It is evident, notwithstanding the words of transfer to the Company contained in the first part of the

19th section of the act of the State, that it was not the intention of the statute that title should pass except upon the construction of the road."

This court, speaking in reference to the requirement that the Railroad Company should comply with the requirements of the grant with reference to the filing of a map of the line of road, in the *Cedar Rapids R. R. Co. vs. Herring*, 110 U. S., 41, says: "In all these cases the requirement has been of a map of the line of the road—of the whole road and not a part of it. A complete and not a partial map. A map definitely showing the line as the language clearly means." So also, under the decisions, only the construction of the entire road entitles appellant to all the lands granted.

In some cases, where the grant is a co-terminus grant, as in *Wis. Cent. R. Co. vs. Price County*, 133 U. S., 496, and the company has complied with the requirements of the grant and constructed the portion of the road entitling it to receive the place lands applicable to the construction of that portion of the road, and where there is no requirement that the State legislature determine before the patent or deed issues that the company has complied with the terms of the grant, it has been held that the company constructing the road has an interest in the place lands prior to the issuing of the patent.

Such is the holding in that case, and from the facts stated in the opinion, the doctrine there announced has no application to the case at bar, where the whole grant is made for the purpose of procuring the construction of the entire located line.

From the terms of the act of Congress making the grant, and of the State legislature accepting the same and conferring it upon appellant, it is very evident that it was not designed or intended that the title should pass to the railroad company

until the legislature directed the Governor to make the conveyance. Such are the plain provisions of the act of the State legislature.

The Company accepted the grant—took the same with these conditions imposed—that the legislature should determine the question as to the compliance of the company constructing the road with the terms and conditions of the National and State acts, and the material question is: has appellant Company earned the undeeded lands by reason of the road constructed?

Appellant's counsel conceded that the Circuit Court correctly held that the grant was not a co-terminus one. That the whole lands were granted for the building of the entire line of road. That the first section of the Congressional grant conferred the lands upon the State, and that the State legislature conferred the same rights upon appellant Company. If the grant was a full one so that there was ten sections of land for every mile of located line of road, no difficulty would arise in administering the grant. Before the Company commenced the construction of the road the amount of land applicable to the building of the same was known. Appellant Company then knew that enough land did not pass to the State to give ten sections per mile for the entire located line. It also knew that no more land could be distributed under the provisions of the fourth section, which it is conceded did not increase the grant, than were conferred by the first. It also knew that the same provision was made for the payment for the construction of the last ten miles as for the first. It was then apparent that ten sections per mile could not be obtained for the construction of the entire line of road and upon the theory that the Company was acting in good faith and designed and intended to comply with the terms of the contract and build the road for which the grant was made; it undertook to

build the same for the number of acres per mile granted to the State for that purpose. The phraseology employed in section 4 is in reference to a full grant; but if section 1 did not confer ten sections per mile, it is apparent no more could be conveyed to the State under section 4 than section 1 of the act granted, and the Trustee did not undertake to convey to the railroad company more land than was granted. The State, as Trustee, was charged with the duty of providing for the construction of the entire line of road and if it was apparent, when the lands were patented to the State, that there would not be enough to give ten sections per mile for the entire line, it was the duty of its legislature to authorize and convey only the amount per mile the Company had earned by the road constructed; hence, we urge the Circuit Court was right in holding Appellant Company entitled to only that portion of the land granted that the constructed road bears to the entire length of the located line. If it were a co-terminus grant the company constructing the road could only have received for each consecutive ten miles the lands within the granted and indemnity limits applicable for the construction of each ten miles of road; and when the entire grant is made for the entire line of road and only a portion of the road is constructed, only such a part of the land granted as the constructed road bears to the whole of the located line, should be deeded to Appellant Company.

It is conceded, as claimed by appellant, that had it completed the entire line of road it would have been entitled to all the land granted.

Such are the provisions of the act making the grant; but having constructed but 56 of the 83 miles of located line, the lands not earned are subject to forfeiture. It is not the patenting to the State, as Trustee, that vests the title so that a forfeiture cannot be decreed. The patenting referred to in

the Congressional grant is the conveyance that vests title in the appellant Company, whether that conveyance be by deed, patent or certificate. The land that has been earned and conveyed to the appellant Company cannot be taken from it upon a forfeiture decreed. The other lands embraced in the grant may be.

Counsel for appellant, conscious of the difficulty of making clear to the court that the construction of 56 miles of road entitles it in equity, upon final adjustment, to the entire grant for the 83 miles, suggests that a road from LeMars to Sioux City was not needed anyway; that some other company had built a road, as it contracted to do, and that the government, by the two land grants, had secured one road, and that Appellant Company has secured the right to run its trains over that line; that the United States and the public ought to be satisfied with this arrangement, and that the government has got all that it is entitled to, and such comforting suggestions.

We submit Congress fixed the termini of the road and presumably knew where the public interests demanded its construction. The leasing of a line of road has never been regarded as a sufficiently meritorious act to warrant the granting of lands by the government, nor is it an excuse for not complying with the terms of the contract to build and operate the road according to the terms of the grant. It is reasonable to presume that with the knowledge Congress had of the land grant that had been made for the construction of the Iowa Falls & Sioux City R. R. and the road that had been constructed, if another road was not needed between Sioux City and LeMars it would not have provided for the building from Sioux City to the north State line. If LeMars was to be one of the termini it would have so provided in the grant. Neither can it be presumed that Congress anticipated that

appellant, in disregard of the terms of its contract, would refuse to build from LeMars to Sioux City and claim the entire land grant for what it had built.

In the case at bar the lands in the place and indemnity limits had been ascertained. The government and the railroad company knew the number of acres applicable to the grant before appellant commenced the construction of the road. The 83 miles of road was to be constructed for the amount of land found applicable to the grant. The cases cited by appellant's counsel, in which the courts have held the lands in the place and indemnity limits in a co-terminus grant applicable to the construction of a portion of the road, even before the entire line is located, have no application here. The record discloses the facts, upon which those decisions were based, do not exist in this case. The direful consequences so eloquently depicted by counsel for appellant, that follow the failure to build the road, under the construction given the act by the Circuit Court, could all have been avoided by honesty and good faith on the part of appellant. If it had constructed the road as it contracted to do none of the consequences attendent upon a violated contract would have been visited upon it.

By the terms of the grant the lands that can be resumed are clearly defined—those which have not been patented to the railroad company. The lands which have been patented, deeded or certified to the railroad company in payment for road built are the lands freed from conditions to which the rights of the United States are cut off, referred to in the decisions cited. This class of land is not sought to reach. The other class of land not patented or deeded to the railroad company by the very terms of the grant revert to the United States on failure to build the road. The facts that the grant is made to the State of Iowa and that the patents issue to the

State and not to appellant, and that the legislature must determine whether the appellant has complied with the contract and ordered the lands conveyed, are entirely ignored in appellant's argument. These facts take the case out of the line of decisions cited by counsel for appellant and bring it within the purview of those cited in this brief.

The holding of the Circuit Court that the United States should only pay for the road built may be an innovation upon the customs and usages of railroad companies which, as counsel urge, know no *via media*. The whole grant for the building of the fewest number of miles of road that, upon any theory, will entitle it to the land, is the claim. A decision that upon final settlement gives the Company only what it has earned finds no favor with appellant, neither is the position so often asserted, that appellant is entitled to 100 sections for every 10 miles of road constructed, sustained by the terms of the act. The modification, if found within the grant, applies to every 10 miles of the located line. If there had been but 60 sections applicable to the grant and 10 miles of road had been built, and the certificate of the Governor, as required by the act, had been made, clearly but 60 sections could be patented to the State for appellant. If the eight 10-mile sections had been completed and certificates properly made by the Governor, only the amount of land in the grant could have been patented to the State. If there was only 60 sections for every 10 miles, that is all appellant could obtain. No construction of the act can change the amount appellant would receive. The 10 sections per mile must be cut down to what is granted. It is only by failure to carry out the contract that appellant can hope to obtain more. It would come as a reward for bad faith and violated contract.

It is suggested that if the Company had not supposed it could get all the lands for building a part of the road it might

not have entered into the contract. This may be so, but it does not change the terms of the contract or appeal very strongly to a court of equity to assist in carrying out the scheme.

The claim of appellant that the United States, under the Circuit Court's construction of the grant, can resume all the lands patented, finds no support in the act or decree. Only those lands that have not been deeded or patented to the Company revert to the government.

The changes are rung all through the argument upon the indefeasible title obtained under the first section of the grant. Appellant's rights depend upon the construction of the road. In this way, only, did it become entitled to any land. If it had simply accepted the grant conferred by the State legislature and built no road, appellant would have had no interest in the lands. The indefeasible title would have become very shadowy. So also, in the light of the facts disclosed by the record, many of the difficulties suggested with the court's plan of an equitable adjustment of the grant vanish into thin air. Under the plan adopted appellant obtains and holds many thousand acres in excess of what it is legally entitled to. It has only lost what it hoped to hold through construction of the grant rather than by building and operating the road.

Opposed to these claims are the rights of some hundred or more settlers who have gone on to tne undeeded lands enumerated in the 21st section of appellee's bill of complaint. The United States, through its Secretary of the Interior, had demanded that the State of Iowa reconvey the lands it held in trust. The State of Iowa had, by public acts, declared the undeeded lands government lands. The settlers, invited by homestead and pre-emption laws, settled upon these lands, and in good faith have made large and valuable improvements

thereon, and seek to enter the same under the land laws of the United States.

The policy of the government has been to protect those who, in good faith, are seeking to make homes upon the government lands. The Circuit Court in this case rightfully held that they are entitled to protection. One of the objects sought to be attained by the act under which this suit is brought is the protection of the settlers upon lands claimed under the land grants from the United States. This court held in the case of the *United States vs. M., K. & T. Ry. Co.*, 12 Supreme Court Rep., 13, that the settlers are entitled to protection.

The settlers claim that they be allowed to enter the lands under the land laws of the United States. They have patiently awaited the establishment of the government's title thereto, and trust that the decision of this court will remove the doubts and uncertainties that have so long clouded their claims and enable them to obtain title to their homes that they may enjoy, in old age, the fruits of their labors.

WM. L. JOY,

Counsel for Settlers.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

Record Case No. 14620.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, *Appellant*,
vs.
THE UNITED STATES.

No. 149

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF AND ARGUMENT FOR THE UNITED STATES.

SOME MATERIAL FACTS.

Some of the facts material in this case are as follows:

I. *May* 12, 1864, an act of Congress (13 Stat., 72, Printed Record, 11) was approved, granting to the State of Iowa, in most respects in the usual form, lands in aid of the construction of a railroad from Sioux City to the south line of Minnesota, at a point to be selected by the State, and for the use and benefit of the McGregor Western Railroad Company in aid of the construction of a railroad from South McGregor in a westerly direction until it shall intersect, in O'Brien County, said road running from Sioux City to the Minnesota State line. The grant was of ten odd sections per mile of completed

road, to be selected within ten miles of each road, with indemnity lands from odd sections within twenty-mile limits.

II. *January* 1, 1866, the Sioux City and St. Paul Railroad Company was incorporated (117 U. S., 407), and for convenience will be called herein the SIOUX CITY COMPANY.

III. The rights of the McGregor Western Company under the Act of 1864 have passed though several phases and corporations to the Chicago, Milwaukee and St. Paul Railway Company, which will be called the Milwaukee Company. (6 Interior Dept. Land Dec., 57, 65; Record, 56, par. 39.)

IV. *By Act of April* 3, 1866, Ch. 134, 11 Gen. Assembly, the State accepted the grant. (Printed Record p. 14; Rep. Register State Land Office, Nov. 12, 1867, p. 67; also by Act of April 20, 1866, Ch. 144 (*Id.* 69; Printed Record, 16), as corrected by Act March 24, 1868, Ch. 42. (Record, 16–17; State Register Rep., Nov. 10, 1869, p. 358.)

The Iowa Act of April 20, 1866, provides that the—

"lands shall be held by the State in trust for the benefit of the Railroad Company entitled to the same * * * and to be DEEDED to said Railroad Company, AS SHALL BE ORDERED BY THE LEGISLATURE * * * at any regular session." (Record p. 16.)

The Legislature of course could not and did not waive or modify the requirement of Congress as to the location of the road or its effect.

V. The Legislature never made any order directing any lands to be "*deeded.*"

VI. The Iowa Act of April 3, 1866, gives to the Sioux City Company the land grant rights of the road from Sioux City to the Minnesota line, and requires THAT COMPANY to—

"locate and *definitely fix the line and route* of said road as soon as practicable * * * and file a map," etc.

VII. *September* 19, 1866, the Sioux City Company filed with the Secretary of State of Iowa its acceptance of the grant (Iowa Register Land Rep., Oct. 1, 1877, p. 97; Sup. Court Rec., 17; Record, 50, par. 5.)

VIII. *September* 27, 1866, this Company commenced the location of its road in Sioux City and finished its location to the Minnesota line October 4, 1866. (Sup. Court Rec., 18, 19; Record, 50, par. 6.)

IX. *July* 17, 1867, the map of definite location of this road was filed in the General Land Office. (Record p. 19; Record 50, par. 7.) It was filed in office of Secretary of State of Iowa, April 2, 1867.

X. *August* 26, 1867, the Commissioner of the General Land Office withdrew from market all the odd sections within the 10 and 20 mile limits of this road. (Printed Record, 65.)

XI. At the point where the road of the Milwaukee Company intersects that of the Sioux City—Sheldon, in O'Brien County—the 10 and 20 mile limits of the two roads *overlap*, giving rise to conflicting claims between the two companies.

XII. The State of Iowa never fixed a terminal point on the Minnesota line for the road (Record, 57, par. 10), but the Company filed a map showing a route of road, of course with a terminus, assuming to act under sec. 6 of the Iowa Act of April 3, 1866. (Record, 15; Record, 57, par. 10.)

XIII. *In* 1872 the Company *commenced* the construction of its road *on the south line of Minnesota*—not as the law required, at Sioux City—and by September 25, 1872, had completed it to Le Mars, a distance of $56\frac{11}{100}$ miles, besides $1\frac{1}{10}$ miles in Sioux City. From Le Mars

to Sioux City, 25 miles, the road has never been constructed. (Record, 51, par. 11; Record, 65; Record, 56, par. 38.) The map of construction (Record, 32) shows location. (Record, 54, par. 27.)

XIV. The Governor certified to the completion of five 10-mile sections of road: 1872, July 26; August 10, 1873, Feb'y 4, 1873. (Record, 51–2; par. 12; Record, 65, 67.)

Patents were issued by the United States to the State of Iowa. (Record, 52; pars. 13–16.)

1872, October 16,	for acres,	191,464.04	(Rec., 67–83).
1873, June 17,	"	205,374.76	(" , 84–103).
1875, January 25,	"	10,911.81	(" , 103–109).
1877, June 4,	"	160.00,	(" , 110–111).
Total,		407,910.21	

This includes 40 acres *twice* patented, leaving the correct amount 407,870.21.

XV. 1874, *March* 13, an Iowa statute authorized the Governor to "certify"—not to "DEED"—to the Sioux City Company (Record, 52, par. 17; Record, 112) all lands *then* held in trust for it in accordance with the Iowa Act of April 20, 1866.

XVI. 1878, *November* 30, the Milwaukee Company completed the construction of its road to the point of intersection with the Sioux City road in Sec. 31, T. 97, R. 42, at Sheldon, O'Brien County. (Record, 52, par. 18.)

XVII. 1. 1879, *April* 7, the Milwaukee Company filed its bill in the United States Circuit Court for partition of the lands in the overlapping granted and indemnity limits against the Sioux City Company and others. (Record, 52, par. 19; Record, 112.)

2. This case was decided in the Supreme Court March 29, 1886 (117 U. S., 406–410), and the rights of the two

companies, *as between themselves*, were fixed as follows:

(1) Lands within the common granted and common indemnity limits to each company an undivided half.

(2) Lands within the granted limits of the Milwaukee road, and within the indemnity limits of the Sioux City road, all to the Milwaukee Company.

(3) Lands within the granted limits of the Sioux City road, and within the indemnity limits of the Milwaukee road, all to the Sioux City Company. (6 Land Dec., 58; Record, 163; see Partition Record and proceedings in this Record, Exhibit 16, pp. 112–162.)

3. 1886, *May* 21, a decree was made in the Circuit Court in pursuance of a mandate of the Supreme Court. (117 U. S., 406–410; Record, 53, par. 22; Record, 136–153.)

☞It is *especially* to be noted that *of the lands claimed by settlers* (Record, 248–250, Exhibit 35), none were set off to the *Milwaukee Company* except the E.½, S. E.¼, Sec. 7, Town 97, R. 42, claimed by James Poling (Record, 158), and also the N. E.¼ of N. E.¼ and S. E.¼ of S. E.¼ of Sec. 31, T. 97, R. 42, 80 acres in O'Brien County (Compare Record 158, 249), which is claimed by James Griffin, a settler (Record, 249), who *also* claims the S. E.¼ of the N. E.¼, and the N. E.¼ of the S. E.¼ of the same section, in all 160 acres. (See Schedule *Appendix C*, hereto.)

4. It is to be noted that as to certain lands within the overlapping limits of the two roads, no partition was made because the Sioux City Company having received patents therefor, had sold them to innocent purchasers. (Record, 154–157; Partition Decree, Record, 140, 142; Partition Report, 154, 157.) The Milwaukee Company by arrangement with the Sioux City Company, ratified the sale to such purchaser.

5. 1886, *September* 27 and *November* 30, the Governor

of Iowa patented to the Milwaukee Company the lands apportioned to it by the decree of the Circuit Court, which had not been theretofore patented or certified by the Governor. (Record 53, par. 24.) There are *prior* acts and proceedings affecting these lands.

XVIII. 1882, *March* 16, an act of the Iowa Legislature (Laws 1882, Ch. 107) "*resumed all the lands* and rights conferred upon the Sioux City Company by the Act of Congress of May 12, 1864, and the Iowa Act of April 3, 1866, which had not been earned by said company." (Printed Record, 210.)

XIX. 1884, *March* 27 (Laws 1884, Ch. 71) the Iowa Legislature by act conveyed to the United States the land "*resumed* and intended to be resumed" by the Act of March 16, 1882, and required the certification by the Governor to the Secretary of the Interior *of all lands* patented to the State which had not been patented by the State to the Sioux City Company. It is claimed by the Company that nothing in the act was to be construed as applying to lands in Dickinson and O'Brien Counties. (Printed Record p. 212.) This claim is denied by the settlers.

XX. 1887, *January* 12, the Governor certified said lands to the Secretary of the Interior, including 26,017.33 in Plymouth, Sioux and Woodbury Counties. (Record, 163; 6 Land Dec., 58.)

SETTLERS' RIGHTS.

XXI. 1. 1887, *January* 15, application was made by the settlers on some of the lands to the Secretary of the Interior to request the Attorney-General to commence suit in the name of the United States to cancel land patents to the Sioux City Company. (See application by William Lawrence, attorney for settlers, January 15, 1887, p. 91; additional argument April 5, 1887, p. 92, on file in General Land Office.)

2. 1887, *July* 26, the Secretary did make such request. (Record, 53, par. 23; Copy of Secretary's letter, Record, 168, 172; 6 Land Dec., 54.)

3. Between 1882 and 1885, settlers went on certain of the lands described in paragraph 21 of the bill (Record, 6–8) and made claim thereto under the homestead and pre-emption laws; they filed applications to enter the lands with the proper register and receiver of the United States Land Office, which were rejected and appeals taken from said decisions, and said parties have *ever since continued to improve and cultivate said lands*, and have made valuable improvements. The Sioux City Company has commenced ejectment suits, still pending in the State Court, against the parties so in possession. (Record, 53, par. 51; Record, 61, par. 51; Exhibit 35, Record, 248.)

4. A list of the lands claimed by settlers is in Exhibit 35, pages 248–250 of printed record.

☞ As noted, *ante* XVII, of the lands claimed by settlers none were set off in partition to the Milwaukee Company, except E. ½, S. E. ¼, Sec. 7, T. 97, of R. 42, claimed by James Poling, and also the N. E. ¼ of N. E. ¼ and S. E. ¼ of S. E. ¼, Sec. 31, T. 97, R. 42, 80 acres in O'Brien County (compare Record, 158, 249), which land is claimed by James Griffin, a settler.

The settlers claim *other lands* not described in Exhibit 35. (See Appendix C, hereto.)

If the United States obtains the decree asked for, the rights of settlers can be thereafter protected, especially as all the lands claimed by the settlers (Appendix C) are included in paragraph 21 of the bill, except only that J. Poling claims in schedule C, S. E. ¼, Sec. 7, T. 97, R. 42, whereas the paragraph 21 contains S. W. ¼, N. E. ¼, and N. E. ¼, N. W. ¼ and N. W. ¼, S. E. ¼, Sec. 7–97–42, thus omitting to include E. ½ and

S. W. ¼ of S. E. ¼ of 7–97–42 claimed by Poling; and except also that James Griffin claims land not in the bill—the Northeast quarter of the N. E. ¼ and the S. E. ¼ of the S. E. ¼, Sec. 31, T. 97, R. 42.

The lands set apart to *the Sioux City Company* by the *partition decree* (paragraph XVII, *ante;* paragraph XXII, *post*) which had not therefore been patented by the State, are the lands described in paragraph 21 of the bill in this case as to which the United States asks for decree to quiet title. (Bill, par. 21, Record, 7–8; Partition, Record, 160–162; agreed facts, Record, 53, par. 25.)

They are, in part, included in class 3, list of the partition decree. (Record, 143–146. Compare with Record, 7–8, and in the Commissioner's Report of partition, Record, 154–162, and 160–1.)

5. For the protection of these settlers and others in like condition Congress passed the Acts of March 3, 1887 (24 Stat., 556); April 21, 1876 (19 Stat., 35); May 14, 1880 (21 Stat., 140); June 15, 1880 (21 Stat., 237); Act of July 26, 1866 (Sec. 4, 117 U. S., 228); M., K. & T. Co. *vs.* Noyes, 25 Kas., 340. (See Report of Committee on Public Lands, No. 45, in 49th Congress, 1st Session, January 18, 1886, by Senator Plumb as to *these lands*, referred to by Secretary Lamar (Record, 171); Ex. Doc. No. 124, Parts 1 and 2, Senate, 49th Congress, 2d Session; and as to Rights of Settlers, Brief of William Lawrence in Ard *vs.* Brandon, No. 141 Sup. Ct. U. S., Oct. Term, 1894.)

6. The RELIEF asked for settlers is stated under the FIFTH PROPOSITION, *post*.

XXII. The list of lands in paragraph 21 of the bill (Record, 7–8) is a correct list of the lands in Dickinson and O'Brien Counties, included in the patents from the United States to Iowa, *which the State retains* and has not certified, patented, or otherwise disposed of.

They are embraced in the partition decree (Record, 53, par. 25; Record, Exhibits 16–20, pp. 112–162; Partition, 154–157) and were set off in partition to the Sioux City Company. (See Paragraph XXI, *ante*.)

Of these lands 21,979.85 acres lie within the place limits and the residue, 6,728.76, within the indemnity limits of the located line of the Sioux City Company, making a total of 21,979.85. (Record, agreed facts, 59, 60.)

XXIII. The State of Iowa has not completed the road and has not "deeded," certified or patented the land described in paragraph 21 of the bill for any purpose. (Record, 54, par. 28.)

XXIV. The United States demanded of the State and the Sioux City Company a reconveyance of the lands described in paragraph 21 of the bill as required by the Act of March 3, 1887 (24 Stat., 556), more than ninety days before the bill was filed. (Record, 54, par. 29.)

XXV. Exhibit A (Record p. 32) shows the lines of location and construction of the roads of the Sioux City Company, of the Milwaukee Company, of the Iowa Falls and Sioux City Company, except the first line of location of the Milwaukee Company.

But the Milwaukee Company does not admit the correctness of the *place* and indemnity limits on said map. (Record, 54–55, par. 30.)

XXVI. The Map, Exhibit 23—which does not appear in the record—is a copy of the map made, as required by the Act of March 3, 1887 (24 Stat., 556), by the Commissioner of the General Land Office, General Sparks, in 1887, showing the lines of location and construction of the Sioux City road for the aforesaid 50 miles thereof, and shows the place and indemnity limits as THEN ascertained and determined by him for said 50 miles. (Record, 55, par. 31. See Maps, Senate Ex. Doc. No. 124, 49th Congress, 2d Session.)

XXVII. The Exhibit No. 24 (Record, 172) is a correct list of the odd-numbered sections within the conflicting 10-mile limits of the two roads as *defined in the Map, Exhibit No.* 23 (*not* found in the Record). (Record, 55, par. 32.)

XXVIII. The Exhibit No. 25 (Record, 176) is a correct list of the odd-numbered sections within the 10-mile limits of the Sioux City road outside of the conflicting limits of the Milwaukee road for the 50 miles south of the Minnesota line *according to the place limits* as defined and certified. (Map No. 23, not in the Record). (Record, 55, par. 33.)

XXIX. The Exhibit 26, improperly printed 29 (Record, 185), is a correct list of the odd sections within the conflicting 10-mile limits of the two roads *according to the diagram of withdrawal transmitted August* 26, 1867, *to the local land office at Sioux City.* (Record, 55, par. 34; Record, 185–6.) This differs a little from the map of adjustment made by Commissioner Sparks.

XXX. The Exhibit No. 27 (Record, 188) is a correct list of the odd-numbered sections within the 10-mile limits of the Sioux City road and outside of the conflicting 10-mile limits of the Milwaukee road *according to the diagram of withdrawal transmitted to the local land office* (*made Exhibit No.* 81 to the bill, not in the record) and within the *terminal limit of the* 50 *miles of completed road as defined in* Exhibit No. 23 (not in the record). (Record, 55–56, par. 35.) For the maps not in the record but on file see agreed statement in Decree, Record page 260.

XXXI. The value, when this suit was commenced, of the more remote of the indemnity lands on both sides of the grant was $7.00 per acre. (Record, 56, par. 37.)

XXXII. The Sioux City Company in 1879 sold to *another corporation* its said property and franchise, and

ceased to continue to exist for any purpose of a railroad company. (Record, 56, par. 39.)

Other facts appear in the agreed statement of facts in the printed record, p. 54, par. 26; pp. 56–63, paragraphs 36–53.

The lands patented to the State were disposed of as follows:

Total lands patented to the State (Record 165, 169)	407,870.21
Patented to the Sioux City Company	322,412.81
Withheld from the Company by the State	85,457.40

Of the 322,412.81 acres so patented there were awarded by partition decree to the Milwaukee Company 41,687.52. (Record, 169; Partition Decree, Record, 140–142; Partition Report, 154–157.) The lands so withheld were disposed of as follows:

Lands withheld	85,457.40
Reconveyed to the United States	26,017.33
Residue	59,440.07

Of the lands certified by the State to the Sioux City Company the latter still holds or has sold 280,725.29 acres.

The bill avers (Record, 6, par. 21) and answer of the Milwaukee Company does not deny that the State holds the "*legal title*" to lands, the lands described in paragraph 21 of the bill, of which there are in

Dickinson County	800.00 acres.
O'Brien County	21,179.85 "
Total	21,979.85 "

The bill asks that the title of the United States thereto be established and quieted and the Circuit Court so decreed. (Printed Record, 257.) It *does not*

ask for the cancellation of any *patent* or certification of lands issued to the Railroad Company.

Unless the Sioux City Company is entitled to the lands now held by the State of Iowa, or some part thereof, the United States is entitled to a decree quieting its title thereto.

The bill *does not*, as it *might have done* under the Act of March 3, 1887, or, for that matter, without any statute, seek to cancel all the patents issued to the Company. It does not ask to recover compensation for the value of *all* the lands, as it might under the Act of 1887, but ONLY for the value of 1,285.49 acres of land, for which it has received patents in excess of any possible amount it has earned, *if any*.

This amount is made up, *according to the adjustment of the land grant made under the Act of March* 3, 1887, thus:

Lands in place subject to grant within the 50 miles of completed road....	314,352.79 acres.
Deduct one half of the place lands in the overlap inuring to the Milwaukee Company.....	34,912.99 "
Leaving a residue of which the evidence, on the theory of the bill, concedes the Sioux City Company earned.....	279,439.80 acres.
The Sioux City received patents in all for.....	280,725.29 "
Excess of lands the Sioux City Company has received over any possible amount it could earn, if any *.....	1,285,49 acres.

(See Exhibit 26, misprinted 29 [Record, 185]; Map, Exhibit 23, showing adjustment of 1887, not in printed

* The excess claimed in the bill is 1,288.13 after correcting a probable misprint of 279,237.16 intended to be 279,437.16.

record, but on file to be used in evidence as provided in decree [Record, 260]).

The bill only asks to establish and quiet the title of the United States to the 800 acres in Dickinson County, and 21,979.85 acres in O'Brien County, in all 21,979.85 acres.

But if it can be shown that the Sioux City Company *is not entitled to hold any lands* then it will follow that it cannot claim any of these 21,979.85 acres.

And *this is the claim now made*, in support of which the following PROPOSITIONS will be maintained:

I. THE SIOUX CITY CO., BY ACCEPTING THE PROVISION OF THE ACT OF CONGRESS OF MAY 12, 1864, AND THE IOWA ACT OF APRIL 3, 1866, THEREBY CONTRACTED TO CONSTRUCT AN ENTIRE LINE OF ROAD COMMENCING AT SIOUX CITY AND PROCEEDING NORTHWARD TO THE MINNESOTA STATE LINE. SUCH COMPLETION OF THE ENTIRE ROAD IS A CONDITION PRECEDENT TO THE RIGHT TO HOLD ANY LANDS. THE ABANDONMENT OF THE CONTRACT BY THE COMPANY IS A WAIVER OF ALL RIGHTS TO LANDS.

According to the map of withdrawal of the lands from sale the figures would be thus:

Lands in place subject to grant within the 50 miles of completed road	318,151.53 acres.
Deduct one-half the place lands in the overlap inuring to the Milwaukee Company	35,357.39 "
Leaving a residue of	282,794.14 acres.
The Sioux City Company has received patents for	280,725.29 "
Deficiency, if the Sioux City Company can lawfully claim for 50 miles	2,068.85 acres.

The argument is intended to show that the rights of settlers should be protected; that the Sioux City Company is not entitled to receive *any more* lands; that by some provision in the decree *James Griffin should be permitted to hold the lands he claims*, and that the Milwaukee Company should be reimbursed, from *other lands* in the bill not occupied by settlers, for 80 acres of the land he occupies, which was in partition set off to the Milwaukee Company, and that James Poling in addition to S. W. ¼, N. E. ¼ and N. W. ¼, S. E. ¼ of section 7, T. 97, R. 42, should also be authorized to hold E. ½ and S. W. ¼, S. E. ¼ of said section. Of this land by him claimed the E. ½ of S. E. ¼ of said section was set off in partition to the Milwaukee Company. (Record, 158.)

THE COMPANY HAVING SOLD ITS FRANCHISE AND PROPERTY THERE IS NO COMPANY TO CLAIM LANDS.

II. THE COMPANY HAVING FAILED TO CONSTRUCT AND OPERATE THE ENTIRE LINE OF ROAD AS A "CONDITION SUBSEQUENT" IN THE CONTRACT, HAS FORFEITED ITS RIGHT TO THE LANDS IT HAS ALREADY RECEIVED: A FORTIORI TO ALL NOT YET PATENTED TO IT.

III. THE REFUSAL OF THE COMPANY TO CONSTRUCT AN ENTIRE LINE OF ROAD AND TO THEREAFTER OPERATE IT, IS A CONSTRUCTIVE IF NOT ACTUAL FRAUD ON THE UNITED STATES, WHICH JUSTIFIES A DECREE OF FORFEITURE.

IV. THE COMPANY HAS RECEIVED MORE LANDS THAN IT HAS EARNED, EVEN IF ITS CONTRACT TO CONSTRUCT THE ROAD IS SEVERABLE, AS IT IS NOT.

V. THE EQUITY OF THE SETTLERS ON THE LANDS IN CONTROVERSY IS BETTER THAN ANY POSSIBLE EQUITY OF THE RAILROAD COMPANY.

VI. NO LAND COULD BE LAWFULLY PATENTED TO THE COMPANY BECAUSE THE STATE NEVER SELECTED A TERMINAL POINT ON THE MINNESOTA LINE AS REQUIRED BY THE ACT OF CONGRESS OF MAY 12, 1864. SEE IOWA ACT, APRIL 3, 1866, CH. 134, 11TH GEN. ASSEMBLY. (Printed Record, 14.) NO OFFICER OF THE GOVERNMENT HAD POWER TO WAIVE THIS REQUIREMENT OF THE ACT.

VII. NO RIGHT TO LANDS COULD BE SECURED, AND NONE HELD, BECAUSE THE LINE OF ROAD AS CONSTRUCTED DEFLECTS FROM ITS LINE OF DEFINITE LOCATION TO SUCH AN EXTENT AS TO DEFEAT THE RIGHT AND WORK A FORFEITURE.

VIII. THE LEGISLATURE of IOWA HAS (1) DECLARED ALL THESE LANDS FORFEITED TO THE STATE AND (2) HAS REINVESTED THE UNITED STATES WITH THE TITLE, AND (3) THE FORFEITURE DECLARED BY STATUTE IS FINAL AND CONCLUSIVE ON THE COMPANY. (Iowa Act of March 16, 1882; Rep. Iowa Sec'y State; July 1, 1883, p. 98;

Rep. Iowa Sec'y State, July 1, 1885, p. 48; Iowa Act March 27, 1884; same Rep., p. 50; Letter Sec'y Teller to Gov., Iowa, Feb. 6, 1883; Rep. Iowa Sec'y State, 1883, p. 102; Report No. 45 of Senator Plumb, Committee on Public Lands, 49th Congress, 1st Session, January 18, 1886.)

FIRST PROPOSITION.

THE CONSTRUCTION OF THE ENTIRE LINE OF ROAD WAS PART OF (1) A CONTRACT BY THE COMPANY WITH THE UNITED STATES AND WITH (2) A CONDITION PRECEDENT TO THE RIGHT TO PERMANENTLY HOLD ANY LANDS.

I. *There was a contract.*

The Act of 1864 makes a grant of lands "for the purpose of aiding in" the construction of two intersecting roads (Sec. 1). It says:

"The land granted shall be subject to the disposal of the Legislature of Iowa for *the purpose aforesaid* and no other."

There were three specified benefits to accrue to the United States:

1. A *market* for alternate sections of land at the double minimum price (Sec. 2).

2. That the—

"Railroads shall be and remain public highways for the use of the Government * * * free of all toll or other charge upon the transportation of any property or troops of the United States" (Sec. 3), and

3. The transportation of mails at a price to be fixed by the Postmaster-General or by Congress (Sec. 6).

Besides these there were benefits to *land owners*, to *settlers* and to the *public*.

Here were the *do ut des*, the *facio ut facias*—the elements of a contract.

The act of Congress required specific services to be

performed by the railroad companies—their acceptance of the act required them to render the service.

This was a contract. Not only the *corporate* government, but *all the people* were *beneficiaries* in the contract—in effect a *party*.

The well considered settled law of England is in accord with the principles stated.

Blakemore vs. *Glamorganshire Canal N. Co.*, 2 Mylne & Keene, decided in 1832. By an act of Parliament the company was authorized to construct a canal between *specified points*. Blakemore filed a bill to enjoin the construction of the canal in a mode different from that prescribed by the act.

Lord Eldon said:

"When I look upon these acts of Parliament I regard them all *in the light of* CONTRACTS, made by the legislature on behalf of *every person interested in anything to be done* under them. * * * Unless that principle is applied in construing statutes of this description they become instruments of *greater oppression* than anything in the whole system of administration under our constitution. It may be of very little consequence to A. B. whether the canal is brought to his lands through the lands of C. D. or through those of E. F.; nevertheless *if the legislature has said the canal shall be brought* to the lands of A. B. from the lands of E. F., and not of C. D., *this Court* would never permit the parties to bring the canal to the lands of A. B. from the lands of C. D.; the parties are obliged to *submit to the contract which the legislature has made for them.* I have therefore stated, and I have already more than once acted upon the doctrine, that *if a* DEVIATION FROM THE LINE MARKED OUT BY PARLIAMENT WERE ATTEMPTED, I would stop the further making of a canal which was in progress, and for this reason, that a man may have great objection to a canal being made in *one line* which he would not have to its being made in another, and particularly he might feel that objection in a case where parties, after *obtaining from the legislature leave to do*

one thing, set about doing another." (See *Canal Co.* vs. *Blakemore*, 1 Cl. & Fin., 262; *United States* vs. *Central Pacific Railroad*, 118 U. S., 238; *State* vs. *Norwalk & D. T. Co.*, 10 Conn., 157; *Turnpike Co.* vs. *Hosmer*, 12 Conn., 364; *Louisville & N. Turnpike Co.* vs. *Nashville & K. T. Co.*, 2 Swan (Tenn.), 282; *Williams* vs. *H. & N. H. R. R.*, 13 Conn., 411; *Newton* vs. *A. B. R. R.*, 15 Gray, 27.)

These cases show in principle not only that legislative grants with conditions accepted are contracts, but also that courts will require a strict compliance with all their terms.

And so are the authorities: Davis *vs.* Gray, 16 Wall., 203–233; U. S. *vs.* Central Pacific R., 118 U. S., 238; Schulenberg *vs.* Harriman, 21 Wall., 59; Farnsworth *vs.* M. & P. R. R., 92 U. S., 65; Chamberlain *vs.* St. P. & S. R., 92 U. S., 299; M., K. & P. R. *vs.* K. P. R. R., 97 U. S., 497.

The opinion, August 13, 1887, of Secretary Lamar in the case of the Atlantic and Pacific R. R. Company (6 Land Dec., 84) is alike instructive and conclusive on this subject.

The CONCLUSION is, there was a contract as stated.

II. *The completion of the* ENTIRE LINE *of road* COMMENCING *at Sioux City and proceeding northward was a* CONDITION PRECEDENT *to the right of the Company to receive any lands.*

This is so (1) in *law*, and (2) in *reason*.

1. *As to* law:

The authorities show that where the law requires a railroad company to construct a road *to, through or between specified points*, as a condition precedent to the payment of subscriptions, or to a grant of lands, no right to collect subscriptions, or receive lands, exists

unless such condition *is fully and strictly complied with.*

Thus it is said:

"Precedent conditions must be *literally performed*, and even a court of chancery will never vest an estate when by reason of a condition precedent it will not vest in law. It cannot be relieved from the consequences of a condition precedent unperformed." (4 Kent Com., 125.)

So it has been said of railroad subscriptions dependent on conditions:

"The Railroad [Company] which seeks the benefit of such aid is required to comply *strictly* with the terms AS TO LOCATION or completion of its road. A statute of Nevada provided that when a railroad built a first class road from Virginia City to Carson City, running within *twelve hundred feet* west of French's mills, the County of Lyons should issue its bonds in aid of the railroad. The road was built, but it ran within *twenty-four hundred feet* of the point designated instead of twelve hundred feet. A *mandamus* to compel the issue of the bonds was refused, the court considering the contract a *legislative contract* with a *condition precedent*, which *must be strictly complied with* to entitle the railroad to claim the benefits conferred by it." (*Virginia & Truckee R. R. Co.* vs. *Lyons County*, 6 Nev., 68, 71; S. P., *City of Aurora* vs. *West*, 22 Ind., 89.)

And in a similar case, where the conditions to build within *one mile* of a town was not complied with, the court refused to issue process to compel the issue of bonds under a subscription, although the inhabitants of the town had consented to the change, the consent being given after the vote had been taken on a proposition in which the location was fixed at ONE MILE of the town. (*State* vs. *County of Davies*, 64 Mo., 30.) Where LOCATION of the road was one of the conditions of issue, and the bonds were placed in the hands

of a depositary, to be delivered when the conditions were complied with, the route was located as provided in the statute, and upon a certificate of the proper officials as to such location, one-tenth of the bonds were delivered.

Subsequently the route was RELOCATED; the issue of the remaining nine-tenths of the bonds was restrained; the officers were held to be estopped by the first location, which was a *condition* of issue of the bonds in the hands of the depositary. (Ally *vs.* Adams Company, 76 Ill., 101; Burroughs on Public Securities, 267.)

Where a railroad proposition for aid upon specified terms for a ROUTE *indicated in the submission* was accepted by a vote of the people of a town, MODIFICATIONS of the submission by the representatives of the town are *not valid*, and the issue of bonds upon the terms of the modified submission will be restrained. (Town of Platteville *vs.* Galena, 43 Wis., 492; Burroughs on Public Securities, 258; see State and County Court, 64 Mo., 30.)

Where one fails to perform his part of the contract, or disables himself from performing it, the other party may treat the contract as rescinded. (1 Parsons Cont., 19; Bishop Cont., 677; Bloomer *vs.* Bernstein, Law Rep., 9, C. P., 588; Chamber of Commerce *vs.* Sallitt, 43 Ill., 519; Morgan *vs.* Bain, Law Rep., 10, C. P., 15; Suber *vs.* Pullen, 1 S. C., 278.)

See Knevals *vs.* Hyde, 5 Dillon, C. C., 468.

No rights to land can *permanently* attach in the Company, unless the *entire contract* is performed. (Rice *vs.* R. R., 1 Black, 379; Farnsworth *vs.* Minn. & P. R., 92 U. S., 49; Jackson L. & S. R. *vs.* Davison, 37 N. W. Rep., 527; Davis *vs.* Gray, 16 Wall., 203; Ins. Co. *vs.* Moody, 96 U. S., 544.)

And THE contract in this case, under the granting

act, was to COMMENCE the construction at Sioux City and *run north*. This is the duty *expressly* prescribed in the act, which says the grant is made—

"for the purpose of aiding in the construction of a railroad FROM Sioux City * * * TO the south line * * * of Minnesota."

There was a *reason* why the granting act required the construction to *commence* at Sioux City and proceed northward—fully disclosed by the evidence. There were no *vacant public* lands for the first 25 miles north of Sioux City. Congress knew this, and in order to secure the road for *that part* of the line required it to be made "FROM *Sioux City*" northward to the Minnesota line. The Court cannot ignore the words "from Sioux City." Thus a rule of construction is that:

"Every word and clause should, *if possible*, have assigned to it a meaning, leaving no useless words." (Bishop, Written Laws, 82.)

This is especially so in *granting acts*, in which every *reasonable possible* meaning is against the Railroad Company, to require it to *literally* perform every *condition* and *purpose* of the act. The authorities are so numerous as not to require citation.

Can any court say, in view of *the* FACTS and the WORDS of the statute, that Congress intended to permit the Sioux City Company to *commence* its road at the north end and proceed southward?

III. *But it may be said that the Company having performed part of its contract* EARNED, *and is entitled to* HOLD SOME *lands.*

To this there are at least:

FIVE ABUNDANT ANSWERS.

1. *The contract was an* ENTIRETY—*all the land for a whole road.*

a. It is reasonable to believe that Congress would

not have given any lands to construct 56.18 miles of road from the Minnesota line to Le Mars, there to *stop* in an *open prairie*; there reaching no important point, and with no law authorizing connection with any other road. Congress did not give any lands for *that purpose*. Congress has never agreed that the Company should *keep any lands*, except on the condition precedent of the construction of the whole road. No officer of the Government is authorized now to make a new contract. Can the Court make one? How can it fix terms?

The opinion in the Circuit Court (Record, p. 255) properly says:

"As I construe the grant Congress agreed to give in consideration of the building of the *entire line* of road, a quantity of lands equal to the amount of the alternate sections within a *limit* of ten sections on each side of the *located line* throughout its *entire length*, *provided* such quantity could be found within the 20-mile limit. The grant is not so many acres for each mile or each section of ten miles, but so much for the *entire line*."

Congress did not consent to stop the transportation of *mails* and *troops* at Le Mars—they were to be carried from the Minnesota line to Sioux City, and by THIS *Company*, without embarrassment by a running connection with any other company.

b. This is not a case where one man erects half of a building for another on a contract to build a whole one and then abandons the contract. In such case, when the employer accepts the half-built house, a jury can fix the value of the work done, on the basis of the contract price and recoup from it the damages which the employer has sustained by the breach, generally the cost of completing the work.

Phillips Construction Company *vs.* Seymour, 91 U. S., 646–656.

But no such rule or remedy can be applied here. It is utterly impracticable. The United States does not accept or own the partly built railroad. The company has the road.

No *apportionment* of lands can now be made that will do justice to the United States.

2. It may be said the road constructed to Le Mars does there connect with another road to Sioux City.

But the contract was that the Sioux City Company should make and operate a *continuous line* without the embarrassments of (1) running connections with another road (2) and of the *failure* or *refusal* of such other company to continue a running connection.

It is reasonable to infer too (3) that Congress intended the Sioux City road to run on a *different route* than that of the former company, and thus give the Government and the public the benefit of two roads.

3. *Nothing in the granting act gives color to a claim to* PERMANENTLY HOLD *the full* 6,400 *acres for each mile of a completed section of ten miles, without references* (1) *to the final completion of the road, or* (2) *to the amount of lands found subject to grant and indemnity.*

(1) The granting act, sec. 4, provides that when the Governor shall certify to the completion of a section of 10 miles, the Secretary of the Interior shall issue patents to the State "for the benefit of the road," and for a like issue of patents when another section is completed—

"Until *said roads,* or either of them, *are completed,* when the *whole of the lands* hereby granted shall be patented to the State for the uses aforesaid and none other."

It is *not* provided that the Company shall *have any* lands. The State had power to sell the lands for *money* and *give* the Company such *portion* thereof as the law might authorize.

a. Here is in the statute quoted a distinct declaration, that the "whole of the lands" is the consideration for the entire line of *completed road.* This was the purpose of the statute.

The patents for lands for each section were issued merely as a means of *aiding* the Company in the progress of the work, not as fixing any *ultimate right, or apportionment.* PART performance by the Company could not fix the *ultimate right* to FULL performance by the Government—that is, the issue of patents for all the lands.

b. The *ultimate right* could not be thus acquired for ten-mile sections, because, if so, in case of a *deficiency of lands*—as here—all the lands would be exhausted before the completion of the road.

And the further absurd result would follow, that Congress surrendered all remedy or security out of the lands for the final and full completion of the road and relied merely on the good faith of a company which, by fraud or extravagance, might become insolvent or refuse as here to complete its contract. It is not to be presumed that Congress was guilty of such improvidence and want of foresight.

If a party employs a builder to erect a house and the employer agrees to advance money to buy all materials, and does so, and then the builder partly erects the building and the builder sells part of the materials and has part on hand, and then abandons the work, would not a court of equity hold the material on hand to enable the employer to build the house? This is the case here as to lands patented—as to those not yet patented the Government has a *right to them* to secure in part the completion of the road.

c. The *flagrant injustice* of a claim by the Company to keep the land it has and obtain still more proves its absurdity.

A Court of Equity will not aid such iniquity. The maxim will not be violated—"He who seeks Equity must do Equity."

d. And besides this, the rule *in equity*, is *where a condition is precedent equity will not grant relief by way of compensation for part performance.*

Davis *vs.* Gray, 16 Wall., 203, 232; Giddings *vs.* Northwestern M. L. Ins. Co., 102 U. S., 108.

4. There is another conclusive answer.

The granting act did not provide for the conveyance or patenting by the State of any lands *to the Company.*

A. The act says:

"Sec. 3. That the land hereby granted shall be subject to *the* DISPOSAL *of the Legislature of Iowa* for the purpose aforesaid and no other."

The Legislature could have provided for a public or private sale of the lands *for money*, giving the proceeds to the Company.

There would then have been *partial payments* on the contract of the Company to make an *entire line of road.* Neither the State nor the United States has received anything for the lands patented to the Company. An uncompleted road cannot be received. And the *Company has the road.* And in *such case*, the State and the United States would be entitled to *rescind* the *contract for non-completion* and *recover back* the money advanced on it.

B. It was said in March *vs.* Fulton Co., 10 Wall., 676–684, and repeated in La. *vs.* Wood, 102 U. S., 294–299, reaffirmed in Chapman *vs.* Douglas County, that:

"The obligation to do justice rests upon all persons, natural and artificial, and if a *county obtains the money* or *property of others* without authority, the law inde-

pendent of any statute will *compel restitution or compensation.*"

C. So here the United States, on the *same principle*, is entitled to recover the lands given by way of partial payments or their *value*.

A Court of Equity would not aid the Company on a bill for specific performance to secure the lands yet withheld from it.

D. And the Anderson act of March 3, 1887 (24 Stat., 556), does *rescind the contract*, and require a suit to be brought to recover the price fixed by it for the lands—a price much less than the Company has realized from them. (Printed Record, 56, par. 37.)

No officer of the United States or of the State of Iowa was authorized to *waive* the obligation of the Company to complete the entire road or accept part of a road as part performance.

This puts the United States in a position to sue for and recover the *full value* of all the lands patented to the Company, even without the aid of the Act of March 3, 1887.

5. The Company is not entitled to hold any part of the lands by way of compensation for part of the road built, because the entire proceedings show a *deliberate purpose* on the part of the Company to fraudulently refuse full performance.

Thus it is said of the rescission of contracts:

"Where the right to rescind springs from discovered fraud * * * the defrauded party does not lose his right to rescind, because the contract has been partly executed and the parties cannot be fully restored to their former position." (2 Parsons Contracts, 780, 5th edition.)

Properly speaking, there is no rescission on the part to the United States, and no need of any. It has

received nothing to restore on a rescission. The Company has its road, and has by fraud secured lands which it should now restore or make compensation therefor.

6. Congress did not intend to give all the lands for part of a road, and the Company did not so expect or agree.

There is no guaranty of quantity. Indemnity is not allowed for failure in quantity of granted lands. (Cedar R. *vs.* Jewell. 61 Iowa, 410.)

The opinion of Secretary Lamar, August 13, 1887, in the case of the Atlantic and Pacific R. R. Co. is alike able and conclusive on this question. (6 Land Dec., p. 84.)

7. Finally the Company has sold its road, its franchise and property to another company. (Record, 56, par. 39.) This it had no right to do without the consent of Congress. (Pierce *vs.* Emery, 32 N. H., 484–7; Coe *vs.* R. R., 10 Ohio St., 372.) This was an abandonment of its contract. (Atkinson *vs.* R. R., 15 Ohio St. R., 21, 36.) THERE IS NO SIOUX CITY COMPANY NOW TO WHICH THE UNITED STATES CAN GIVE ANY PART OF THE LANDS WITHHELD FROM IT—none with a corporate existence free from a right of forfeiture. (State *vs.* Sherman, 22 Ohio St. R. R., 411.) The land grant was made to secure the *making of a road.* Will the Court give the Company lands when it has sold out and proposes to use them, if obtained for other and unauthorized purposes? This sale was a breach of the condition subsequent to operate a road by THE COMPANY. The effect of this will be considered under the SECOND PROPOSITION, post.

THE CONCLUSION *is inevitable* (1) *that the* ULTIMATE *right to* PERMANENTLY *hold* ANY *land, was not perfect until the whole road was made,* and (2) that the United States could if it chose sue the Company under the Act of March 3, 1887, for and recover the value of the lands patented to it.

SECOND PROPOSITION.

THE COMPANY HAVING FAILED TO MAINTAIN AND OPERATE THE ENTIRE LINE OF ROAD, AS A CONDITION SUBSEQUENT IN THE CONTRACT, HAS FORFEITED ITS RIGHT TO THE LANDS IT HAS ALREADY RECEIVED.

The bill does not, as it might, seek to forfeit the lands already patented to the Company, or seek to recover their value as fixed by the Anderson act of March 3, 1887, except as to 1,288.13 acres.

But if, as *a question of law*, the United States had a right to have a decree of forfeiture for the lands patented to the Company, *a fortiori* it has a right to have its title quieted as to the 21,979.85 acres not patented to it in Dickerson and O'Brien Counties.

CONDITIONS SUBSEQUENT.

THE RAILROAD COMPANY, BY ACCEPTING THE ACT OF 1864, UNDERTOOK THE PERFORMANCE OF "CONDITIONS SUBSEQUENT," THE FAILURE TO PERFORM WHICH FORFEITS THE RIGHTS TO GRANTED AND INDEMNITY LANDS.

The obligation to construct the *entire line* of road according to agreement, was a "condition subsequent."

Thus the Act of 1864 provides:

"SEC. 3. That the land hereby granted shall be subject to the disposal of the Legislature of Iowa for the purposes aforesaid, and no other; and the said roads shall be and remain public highways for the use of the Government of the United States free from all toll or other charge upon the transportation of any property or troops of the United States.

"SEC. 6. That the United States mail shall be transported on said roads, under the direction of the Post Office Department, at such price as Congress may by law provide, provided that until such price is fixed by law, the Postmaster-General shall have power to fix the rate of compensation."

Here are *conditions subsequent* after the construction of an entire line of road, by necessary inference to *maintain* and *keep* it in repair on said line; section 3 says:

"And the said railroads shall be and *remain* public highways for the use" of the Government to carry troops, war supplies, other property and mails on said road.

The authorities show that *for a breach of any one of these conditions* the United States may reclaim the lands patented to the Company.

1. As to the *failure to construct:*

In *Northern Pacific R. R.* vs. *Majors*, 5 Montana, 111, S. C. 14 Am. & Eng. R. R. Cases, 487, a part of the syllabus as found *in the Vol. of R. R. Cases,* is thus:

"An act of Congress granting lands in aid of a railroad company contained a clause 'that there be and hereby is granted' to the company twenty alternate odd sections of land per mile on each side of such route as the company might adopt, and * * * that as each twenty-five miles of road should be completed the lands should be conveyed by patent to the company, and not before.

"*Held:* * * *

"2. The character of the title was that *of a grant upon condition subsequent, liable to be divested by a breach of such condition.*

"3. Such breach could only be taken advantage of by the United States."

A footnote to the case cites *Iowa* vs. *Kirkwood*, 14 Iowa, 162; *Neer* vs. *Williams*, 27 Kansas, 1; S. C. 10 Am. & Eng. R. R. Cases, 561; *Peck* vs. *Rusk*, 10 Am. & Eng. R. R. Cases, 642; *St. Louis R. R.* vs. *McGee*, 75 Mo., 522; S. C. 10 Am. & Eng. R. R. Cases, 649; *Swan* vs. *Lindsey*, 70 Ala., 507.

In *Railroad Land Co.* vs. *Courtwright*, 21 Wall., 316, it is said of a similar statute:

"The * * * conditions as to the completion of the road imposed by the State are *conditions subsequent* and not conditions precedent."

The authorities show that these are not *mere covenants* but *conditions subsequent*. (U. S. *vs.* Central Pacific R.R., 118 U. S., 238; Railroad Co. *vs.* Courtwright, 21 Wall.,316; Stanley *vs.* Colt, 5 Wall., 119; Schulenberg *vs.* Harriman, 21 Wall., 44; Schow *vs.* Harriman, 21 Wall.; St. Louis R. *vs.* McGee, 115 U. S., 473; U. S. *vs.* Repentigny, 5 Wall., 211; McMiken *vs.* U. S., 97 U. S., 217; 2 Parsons' Cont., 527; Boone *vs.* Eyre, 1 H. Bl., 273 *n*; Finley *vs.* King, 3 Peters, 374; Davis *vs.* Gray, 16 Wallace, 203; Hale *vs.* Finch, 104 U. S., 261; Cowell *vs.* Springs Co., 100 U. S., 55; Close *vs.* Burlington R. R., 64 Iowa, 149; S. C. 17 Am. & Eng. R. R. Cases, 35; Blanchard *vs.* Railroad Co. 31 Mich., 43; 4 Kent, 122; Wright on Tenures, 196; Butler's note, 84, Co. Litt., lib. 3; State *vs.* Anderson, 45 Ohio State Rep., 196.)

"To build or *construct* a railroad is *one* thing; to *maintain* the structure after it is erected or built, is *another*. The word *maintenance* has reference to the powers to be exercised *after* the completion. This is the natural force of the expression." (Moorhead *vs.* Little Miami R. R., 17 Ohio, 353.)

The following is in point:

C., C. C. & I. Ry. Co. *vs.* Coburn, 91 Ind., 557; S. C. 17 Am. and Eng. R. R. Cases, 37. In February, 1849, Coburn, "in consideration of the advantages which will result to the public," and to him from the construction of the railroad, granted to it the right-of-way through a tract of land. It was a part of the arrangement that the railway company should "*maintain*" a depot near this land. The company constructed the road and the depot, but subsequently *failed* to

maintain the depot. Coburn filed a bill to have the grant declared forfeited, and it was so decreed.

The Court said:

"In the Indianapolis, etc., Ry. Co. *vs.* Hood, 66 Ind., 580, it was held that where real estate is conveyed to a railroad company for and in consideration of the permanent location and construction of the depot of its railroad thereon, and such depot is constructed thereon, but is subsequently removed and located upon other land, the *removal constitutes a breach of a* CONDITION SUBSEQUENT, although the word 'condition' be not used in the deed. The Court cited Cross *vs.* Carson, 8 Blackf., 138 (44 Am. Dec., 742); Leach *vs.* Leach, 4 Ind., 628; S. C. 10 Ind., 271; Scott *vs.* Stipe, 12 Ind., 74; Clark *vs.* Halton, 57 Ind., 564; see, also, Rawson *vs.* Inhabitants, 7 Allen, 125; Homer *vs.* Chicago, etc., Ry. Co., 38 Wis., 165; Hunt *vs.* Beeson, 18 Ind., 380; Lindsey *vs.* Lindsey, 45 Ind., 562. In determining the question whether the estate granted is one upon *condition subsequent*, the Court will seek to enforce the intention of the parties, to be gathered from the instrument, and the existing facts. (4 Kent., 132; 2 Pars. Cont, 499; Chitty Cont., 74; Horner *vs.* Chicago Ry., 38 Wis., 174.) Decree accordingly."

In a note to 17 Am. & Eng. R. R. Cases, 44 numerous cases are cited. (See Parmelee *vs.* Oswego R. R. 6 N. Y., 74; 7 Barb., 599; Underhill *vs.* Saratoga R. R., 20 Barb., 455; Jackson *vs.* Florence, 16 Johns., 47; Palmer *vs.* Plank Road Co., 11 N. Y., 389; Blanchard *vs.* Railroad Co., 31 Mich., 43.)

And in Schulenberg *vs.* Harriman, 21 Wallace, 44–62, it is said:

"The provision in the Act of Congress of 1856, that all lands remaining unsold after ten years shall revert to the United States, if the road be not then completed, is no more than a provision that THE GRANT [the whole grant] shall be void if a *condition subsequent be* ot performed."

And the crowning breach by the Company is that it has sold its property and franchise and maintains an existence for the sole purpose of securing the lands in controversy to divert them from the purpose for which they were granted.

THE CONCLUSION *is inevitable that the Company has forfeited all these lands.*

THIRD PROPOSITION.

THE REFUSAL OF THE COMPANY TO CONSTRUCT AN ENTIRE LINE OF ROAD, AND TO THEREAFTER OPERATE AND MAINTAIN IT, IS A CONSTRUCTIVE, IF NOT AN ACTUAL FRAUD ON THE UNITED STATES AND ON THE PUBLIC, WHICH, WITH OTHERS OF LIKE CHARACTER, REQUIRE A DECREE OF FORFEITURE.

Among the frauds are these:

I. The refusal of the Company to complete and operate an entire line of road, with a prearranged purpose to utterly disregard the rights of (1) the United States, (2) of settlers and other land owners along the line and (3) of the general public.

II. The utter disregard of law in proceeding to make the road so far as constructed, without first procuring from the State a legislative act fixing a terminal point on the Minnesota line as required by the granting act.

1. The Iowa legislative Act of April 3, 1866, accepting the grant which, it may be fairly presumed, was procured to be passed by the Company, made it the beneficiary, and assumed to give it the power to fix the line of road, including the northern terminus.

III. The line of location of the road was made by the Company with a distinct purpose to disregard it, and construct a road widely deflecting from it.

1. It is matter of history—and a fact averred in the bill (Record, 9, paragraph 23), not denied—shown by

the map, Exhibit A, to answer (Record, 32) that the Company made its line of road where the grant had ample lands to operate upon, and refused to make that part where there were no lands, or so few as to be practically none to be covered by the grant or for indemnity.

☞See especially Senator Plumb's Senate Report, No. 45, 1st Session, 49th Congress, Committee on Public Lands, January 18, 1886.

The Company in fraud of the law commenced construction at the north end instead of the south.

The Company is fortunate that the bill does not ask a cancellation of the patents issued to it—holding as it does 280,725.29 acres of land with no showing, by *evidence* on its part, that this is *less* than a fair proportion of the lands, or than a fair equivalent, by way of *bonus*, for the work done.

When the Company makes no such claim how can the court make it?

The fraud is manifest. The record proves it.

2. The PREARRANGED purpose to disregard the *line of location* is shown in the Iowa accepting Act of April 3, 1866, section 3 of which provides:

"That said Company shall locate and definitely fix the line of the route of said road * * * and shall file a map showing such line. * * * But the *location of such line* or *route, however, shall be considered final, only so far as to fix the limit and boundary within which lands may be selected* under and by virtue of said Act of Congress."

The DEFLECTION of the constructed road was a fraud:

(1) On the United States by securing lands which a true line of location as constructed would not have secured, because—

(*a*) Of the *location of the lands;* and,

(*b*) Because the *located line* is LONGER than the con-

structed line. (See Map, Exhibit A, to answer.) (Record p. 32.)

(2) The deflection was a fraud on settlers and on land purchasers, who would naturally acquire title on the faith of the located line.

The subject of the DEFLECTION is further discussed under the SEVENTH general PROPOSITION of this brief.

IV. The fraud of the Company is further shown by the fact that it *commenced* the construction of the road at the Minnesota line, when the granting act required it to commence at Sioux City. The commencement at the Minnesota line was a part of the general fraudulent scheme:

(1) Only to construct *part* of the line of road;

(2) To secure substantially all the lands subject to the granting act; and

(3) To disregard the rights of the Government, the landowners and the public.

And here, too, the concluding act of the Company consummating its purpose to disregard all obligations, is, that it has sold its road, its other property and franchise, and ceased to make a pretense of performing its duties.

In view of these facts, or of *any one* of them, both at law and in equity, the Company cannot be heard to assert any further claim to lands, and the United States could, if the bill so asked, demand a restoration of lands already secured by the Company, or compensation therefor.

The Company is *estopped* from asserting a claim to more lands and forfeits those patented to it.

Ex dolo malo actio non oritur.

Bishop Cont., 222; *Miller* vs. *Howell*, 1 Scam., 499; *Dowd* vs. *Tucker*, 41 Conn., 197; *Kinard*

vs. *Heirs*, 3 Rich. Eq., 423; *Richardson* vs. *Adams*, 10 Yerger, 273; *Farrar* vs. *Bridges*, 3 Humph., 566.

Martin vs. *Martin*, 35 Alb., 560; *Garner* vs. *Leverett*, 32 Alab., 410; *Bailey* vs. *Jordan*, Id., 50; *Abbott* vs. *Allen*, 2 Johns., ch. 519; *Parham* vs. *Randolph*, 4 How. (Miss.), 435; *Edward* vs. *McLeary*, Cooper Ch. Cas., 308; 2 Swanst., 302; 2 Story Eq.; 695.

The Company will be fortunate indeed if "the Court will leave it as it finds it"—holding 280,725.29 acres of land.

"A deceitful promise not meant to be performed * * * is deemed a fraud." (Bishop Cont., 222; *Miller* vs. *Howell*, 1 Scam., 499; *Dowd* vs. *Tucker*, 41 Conn., 197; *Kinard vs. Heirs*, 3 Rich. Eq., 423; *Richardson* vs. *Adams*, 10 Yerger, 273; *Farrar* vs. *Bridges*, 3 Humph., 566.)

And it is well settled in such case that a court of equity will rescind the contract, and *restore the property procured by fraud* even without requiring the Government to restore or make compensation for any benefits it has received, though in this case the Government has nothing to restore. (Bishop on Cont., 212.)

Thus in *Martin* vs. *Martin*, 35 Alb., 560, it held that:

"It is *not necessary* to the maintenance of a bill in equity for the rescission of a contract on the ground of fraud, that the party complaining should have first restored or *offered to restore what he received* under the contract. (*Garner* vs. *Leverett*, 32 Alab., 410; *Bailey* vs. *Jordan*, Id., 50; *Abbott* vs. *Allen*, 2 Johns., ch. 519; *Parham* vs. *Randolph*, 4 How. (Miss.), 435; *Edward* vs. *McLeary*, Cooper Ch. Cas., 308; 2 Swanst., 302.)

"Courts of equity will generally set aside and cancel and direct to be delivered up agreements and other instruments, however solemn in their form or opera-

tions, where they are voidable and not merely void, under the following circumstances:

"*First*, where there is actual fraud in the party defendant in which the party plaintiff has not participated;

"*Secondly*, where there is a constructive fraud against *public policy*, and the party plaintiff has not participated therein." (2 Story Eq., 695.)

It is enough for this case to claim only a constructive fraud. Adams in his Equity, in discussing rescission and cancellation of contracts for fraud, says:

"The jurisdiction will be exercised against any one who has *abetted* or *profited* by the fraud, and after any length of time." (P. 176.)

THE CONCLUSION *is inevitable that the United States has a right to demand a restoration of the lands* patented to the Company, and *a fortiori* to hold the lands not conveyed to it.

THE CONCLUSION is inevitable that the proposition stated is maintained.

FOURTH PROPOSITION.

THE COMPANY HAS RECEIVED MORE LANDS THAN IT HAS EARNED OR IS JUSTLY ENTITLED TO HOLD, EVEN IF ITS CONTRACT IS SEVERABLE, AS IT IS NOT.

Hence it should not receive any of the lands now in controversy, and especially not the lands *occupied by settlers*, for SEVERAL REASONS.

This proposition is immaterial, if either *one* of the three preceding is correct.

But the importance of the case, especially to the SETTLERS, justifies a presentation of every view proper for consideration.

REASONS *in support of this* FOURTH PROPOSITION.

I. No *law* fixes any rule by which to determine what

is a just proportion of the lands for that portion of road made. No *contract* exists by which to fix a proportion. And these and other considerations show that the only safe or just rule is to deny any lands to the Company, at least *give no more than it has* already received. There is *no evidence* by which the Court can apportion any lands to the Company.

II. *The Court should now on the bill as it is accept the action of the officers of the State of Iowa, and of the United States as to the status of these lands.*

The granting Act of May 12, 1864, makes the State of Iowa a trustee of the granted lands, to execute the purposes of the contract to make roads. The State was thus vested with certain *powers*, subject, however, (1) to the *granting act;* subject (2) to the control of the *Interior Department*, and (3) the control of *Congress*.

The Legislature of Iowa and the State officers have united in declaring the Company *not entitled* to the lands now in controversy. (Record, 163; 6 Land Dec., 47, 54, 71, 162.)

1. The Legislature by Act of March 16, 1882, declared all these lands *forfeited* to the State for non-compliance by the Company with its contract. (See Iowa Statutes, Act March 16, 1882, Record, 210; Act March 27, 1884, Record, 212; Report Iowa Sec. State, July 1, 1883, pp. 98, 102.)

2. The State land officers have so declared. (Report Iowa Sec. State, July 1, 1885, pp. 48, 50.)

Extracts will be given from these under the fifth and eighth propositions, *post*.

This is now only important for two reasons: *first*, as a legislative and executive construction of the laws and official acts as to this road; and, *second*, to show the *strong equity* of the settlers on these lands who made homestead entries on the faith of them.

The right of the United States to file its bill to declare the forfeiture is well settled.

As to conditions precedent:

Farnsworth *vs.* M. & P. R., 92 U. S., 49; McMikins *vs.* U. S., 97 U. S., 204; Pacific R. R. *vs.* U. S., 124 U. S., 129; Spalding on Public Lands, Sec. 533.

As to conditions subsequent:

Schulenberg *vs.* Harriman, 21 Wall., 203; Holden *vs.* Joy, 17 Wall., 211; Ruch *vs.* Rock Island, 97 U. S., 693; Van Wyck *vs.* Knevals, 106 U. S., 360.

3. Secretary Teller, of the Interior Department, in his letter of February 6, 1883, to the Governor of Iowa, asserted the claim of the United States to be revested with the title to these lands. (6 Land Dec., 59, Record, 167.)

4. The Committee on Public Lands of the United States Senate made an able report, asserting the claim of the Government and the settlers on the lands. (Plumb's Senate Report No. 45, 1st Sess., 49th Cong., January, 1886. Committee on Public Lands.)

5. The action of the Senate on Senator Wilson's bill, No. 149, in relation to these lands, sanctioned the claims of settlers. (See *Congressional Record*, March 12, 1886, p. 2275; March 13, 1886, p. 2343.)

6. The Attorney-General, after mature consideration, filed the bill in this case and asserted a claim to ALL the lands now in controversy, and more.

Here are *contemporaneous official constructions* by all the executive officers of the State of Iowa and of the United States, charged with duties in relation to these lands, asserting the right of the Government thereto, in order to perform the duty required by the homestead law to the settlers.

And on *reason* and *authority*, this should now, in view of all the circumstances, be accepted by the Court as the end of the controversy—as conclusive.

U. S. vs. *Moore*, 95 U. S., 763; *Edwards* vs. *Darby*, 12 Wheat., 210; *U. S.* vs. *Bank*, 6 Pet., 29; *U. S.* vs. *MacDaniel*, 7 Pet., 1; *Smythe* vs. *Fiske*, 23 Wall., 374; *U. S.* vs. *Pugh*, 99 U. S., 265; *U. S.* vs. *Bowen*, 100 U. S., 511; *Swift Co.* vs. *U. S.*, 105 U. S., 695.

And this is especially so here, because most of these lands are occupied by settlers who have claims under the homestead and pre-emption laws, *which they were induced to make on the faith of the action of the proper officers.*

7. And it will be shown under the EIGHTH PROPOSITION, *post*, that the *forfeiture* of the lands withheld by the State, declared by the Iowa Act of March 16, 1882 (Record, 210), is *final* and conclusive on the Company.

But leaving that consideration out of view for the present the inquiry will now arise:

HOW MUCH, IF ANY, LAND HAS THE COMPANY EARNED?

I. Shall this be decided by an apportionment? By giving it such portion of the land which would have inured to its benefit for an entire line of completed road, as the number of miles actually made ($57\frac{23}{100}$ miles) bears to the total length ($83\frac{52}{100}$ miles) of the required road; or

II. Shall the inequitable claim of the Company be allowed—that it shall have 10 sections of land (6,400 acres) for each of the $57\frac{23}{100}$ miles of completed road, in all 366,272 acres?

I. AND FIRST AS TO AN APPORTIONMENT.

If the Company can claim to hold *any lands*, then on

reason and by every principle of equity and justice, the amount should be determined by an *equitable apportionment.*

The Circuit Court said (Record p. 255) on the theory of an *apportionment:*

"It must therefore be held that the Company is entitled to *such portion* of the lands actually covered by *the grant* as the number of miles of road actually constructed bears to the total length of the located line from Sioux City to the southern boundary of Minnesota."

The Court said this, not as an opinion on what the United States *might claim*, but only in view of the claim that the bill *did make*, for the Court also said (Record, 254):

"The Company having failed to build the entire line, could not *equitably* demand payment of more than the number of miles actually constructed, and this *much* the United States is willing to concede the Company may demand."

The Circuit Court, accordingly, sustained the *entire claim* made by the United States in the bill.

1. Without conceding the justice of the rule suggested for an apportionment, *as a general one*, yet even *that* would give the Sioux City Company less land than it now holds. The Circuit Court rule refers to "the land actually covered by the *grant*." But if to this be added the *indemnity* lands also, the Company still holds too much.

The brief for appellants (Swan & Young, Attorneys, 82, 21) says:

"There were in the *place* limits of defendants' *whole* line [of 83.52 miles], exclusive of lands taken up by settlers, 212,067.86. * * * There were in the indemnity limits 195,842.55 acres."

The amount 212,067.86 includes 40 acres twice patented, leaving as follows:

Lands in place limits	212,027.66	acres.
Lands in indemnity limits	195,842.55	"
Total	407,870.21	"

(See Record bill, p. 5, par. 16; Lamar Record, 165, 169; Map, Exhibit A, to answer. Record, 32; Partition Decree, Record, 136–150. Brief for appellant, pp. 13–14, pars. xiv–xvii, also pp. 21, 82).

Deduct from above the lands awarded by the partition decree to the Milwaukee Company:

In granted limits of Sioux City road	14,640.06
Land in indemnity limits of Sioux City road (Record, 169)	27,047.46
Total	41,687.52
Residue	366,182.69 acres.

If THIS be taken as the basis of an apportionment, the result will be: The Sioux City Company constructed 57.23 miles of the 83.52 miles between Sioux City and the Minnesota line.

The apportionment rule of the Circuit Court would give to the Sioux City Company	$\frac{57.23}{83.52}$	or	$\frac{5723}{8352}$
Of 366,182.69 acres is	250,917.56 + acres		
The Company now holds	280,725.00 acres		
This is an excess of	—29,807.44		

But the Milwaukee Company by the decision in the partition case recovered 79,435.41 acres of the 407,870.21, leaving as inuring to the Sioux City Company only 328,474.80 acres for the *whole distance of* 83.52 miles.

(Appellant's Brief, pp. 15, 23; and Record, 57–8, pars. 41–45; Record, 168, 169, 172.)

[Of the 79,435.41 acres so adjudged to belong to the Milwaukee Company out of the 407,870.21 acres, only 41,687.52 acres had been deeded, or rather certified, by the State to the St. Paul Company. The residue necessary to make up the 79,435.41 was held by the State, and by the State since conveyed to the Milwaukee Company. The Milwaukee Company received other lands for that portion of its road east of the overlapping limits of the two roads.]

The total lands conveyed by the State to the Sioux City Company was thus, as above shown, reduced to 280,725.29.

Appellant's Brief, 15, par. xvii.

The result was that under the granting act of 1864 *the Sioux City Company agreed with the United States to build* 83.52 *miles of road for* 328,474.80 *acres,* or $3{,}932\frac{227}{1000}$ acres per mile, or for 50 miles of finished road $196{,}642\frac{402}{1094}$ acres. This is on the theory that the sections of land were all full sections of 640 acres each. But the evidence shows that the sections averaged less than 640 acres each. And the granting act was for sections without reference to quantity.

2. *But the Company has no right to lands for the* $6\frac{13}{100}$ *of the* $56\frac{13}{100}$ *miles of road constructed.* The Company cannot claim any lands for the $1\frac{10}{100}$ miles of road made at Sioux City. It can claim only for the five completed sections of 10 miles each, or 50 miles in all.

A. As a mode of aiding the Company *during the progress of construction* ☞—*if commenced in good faith, with an intention to build the whole road*—and leaving the *ultimate rights* to be determined by granted and

indemnity selections AFTER the *whole line should be completed* the Granting Act, Sec. 4, provides:

"When the Governor * * * shall certify to the Secretary of the Interior, that any section of ten consecutive miles of * * * said roads is completed * * * the Secretary of the Interior shall issue to the State, patents for one hundred sections of land for the benefit of the road having completed ten consecutive miles as aforesaid. When * * * another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner for a like number * * * until said *roads or either of them are completed*, when the *whole of the lands hereby* granted shall be patented to the State for the uses aforesaid and *none other*."

Now, here are distinct specific provisions that the Company shall not have any lands or the money proceeds of these sales by the State for a *part* of a section of ten miles, except in case such part falls *at the end of the completed* road.

And when the law prohibits any patent for *part* of a ten-mile section, how can the Court say the Company shall have what the law prohibits—patents for the $7\frac{33}{100}$ miles of the $57\frac{33}{100}$ miles?

B. This is the view taken by the Interior Department. (Sec'y Lamar, 6 Land Dec., 61, 62, 63; Record, 163, 171; Railroad *vs.* Courtwright, 21 Wall., 310; Van Wyck *vs.* Knevals, 106 U. S., 360.)

Thus Secretary Lamar in his opinion July 26, 1887, on the application of the settlers on these lands for his request to the Attorney-General to commence this suit, said (6 Land Dec., 62–3; Record, 163, 171):

"It is argued in behalf of the Sioux City Company that it has earned and is entitled to its grant for the full 56¼ miles of road constructed, that is, for the 6¼ miles, as well as for the five sections of 10 miles each. After a careful consideration of the granting act, I can-

not concede the correctness of this proposition. Under the provisions of the fourth section of the act (which section has been quoted in full herein) it is clear that there is no authority for patenting lands under this grant, except upon certificate of the Governor of the State to this Department, that ten consecutive miles of road have been 'completed in a good, substantial and workmanlike manner.' The only exception to the manner of disposing of the lands, as above indicated, is that which may apply when the road is completed. The statute would seem to provide for the disposition of the lands for a fractional part of 10 miles in that case, for it says that the whole of the lands granted shall then be patented.

"This road has not been completed, but stops at Le Mars, about twenty-six miles short of the point (Sioux City) to which, under the grant, it should have been constructed. The reasons given for not completing the road certainly furnish no reason for disposing of the public lands otherwise than in conformity to law. The Company stopped the building of its uncompleted road, with a full knowledge of the requirements of the granting act as to the conditions on which it could get the lands. It is not, therefore, in position to complain because it cannot get lands for the six and a quarter miles of road in question, and must accept the legal consequences of its own act. The Company has heretofore practically conceded its *want of title* or valid claim to lands on account of the six and a quarter miles of road, for it has been to Congress asking for legislation which would give it the lands for said six and a quarter miles. and it opposed a bill which proposed to refer the questions relative to the status of said lands to the courts for judicial determination." (See Report No. 4, Senate Committee on Public Lands, 49th Congress, 1st Session. Copy in the Record.)

c. The construction of an entire ten-mile section was a *condition precedent* to the right to a certificate by the Governor on which to issue patents. And the authorities show that where a condition is precedent equity will

not grant any relief to the Company having failed to perform it. (Giddings *vs.* Northwestern Mut. L. Ins. Co., 102 U. S., 108; Davis *vs.* Gray, 16 Wall., 203.)

The CONCLUSION is inevitable, that whatever mode of apportionment is adopted the basis of it is to be only the five completed sections of ten miles each of road.

II. AS TO THE CLAIM OF 6,400 ACRES FOR EACH MILE OF CONSTRUCTED ROAD.

1. If this claim be allowed the Company would receive 364,948.20 acres; it now holds, or rather had, but sold, 280,725.29 acres—the deficiency to be supplied would be 84,223,91 acres. The whole amount of lands inuring to it for the whole 83.52 if all completed is only 328,474.80 acres.

That is, the claim is for 36,473.40 acres more than exist. The claim is for *part* of a road more than could be obtained for a whole road.

But it has been shown that there is absolutely no legal principle on which *any claim* could be made for more than five completed sections of 10 miles each—50 miles.

2. *The claims for* 50 *miles*—6,400 *acres per mile, or* 320,000,000 *acres in all.*

This is unsupported (1) in *law* and (2) still less in *equity.*

(1) If any lands are to be given, a fair construction of the granting act, is, that in awarding lands for each section of ten miles, the lands in place limits coterminous with that section must be first taken; that the total lands to be patented cannot exceed the amount in the place limits along the 50 miles of completed road, of course, less one half the quantity in the conflicting limits of the two roads. When the place limits are exhausted indemnity lands to be selected, as the act says, "from the public lands of the United States nearest to the tiers

of sections above specified," and then proceed as section 4 says:

"Until said roads or either of them are *completed*, when the whole of the lands hereby granted shall be patented."

When the *whole road* should be completed full indemnity lands would be given so far as there were lands.

This construction should be adopted, because:

a. The *words* of the act fairly admit of it, and the *purpose* of the act requires it—that is, on the theory that any lands can be held by the Company.

Section 4 of the act, by authorizing patents for ten-mile sections, intends to *apportion* the lands inuring to the grant so as to give each section a proper proportion. Of course where, as generally under granting acts, there was an abundance of lands, patents would issue for the full amount for each ten-mile section, otherwise not.

This view is confirmed by the *proviso*—

"That if said roads are not completed within 10 years * * * the said land hereby granted and not patented shall revert to the State * * * *for the purpose of securing the completion of said roads.*"

It cannot be presumed that Congress intended to permit the Company to have patents *beyond* a completed section, because *that would defeat* the object so declared.

The words of the statute will be so restrained as to effect the object of the act rather than to defeat it—*ut res majis valeat, quam pereat.*

And this view conforms to the purpose of the *contract*, as shown by authorities cited under the "FIRST PROPOSITION" of this brief.

b. Whatever may be the rule under *other conditions* (Courtwright case, 21 Wall., 310), the rule suggested is

the only one that can be fairly applied as against the United States under the circumstances of this case.

c. This view is supported by the rule, well understood, that the act is to be construed most strongly against the Company.

2. Adopting this construction, the result is:

The lands subject to grant within the 50 miles of completed road are....	314,352.79	acres.
But of these the Milwaukee Company was entitled to.....	34,912.99	"
Leaving as lands to be awarded to the Sioux City Company, only.....	279,439.80	acres.
And the Company now holds.....	280,725.29	"
This is in excess of the amount it can properly claim.....	1,285.49	acres.

See Exhibit 26, misprinted 29 (Record, 185); Map, Exhibit 23, showing adjustment of 1887, not in printed record, but on file to be used (Record, 55, par. 31), and so provided in decree (Record, 260).

3. Any argument based on mere strict rules of *law* cannot be invoked in aid of the Company now.

This is a proceding in *Equity*, and equitable principles should be applied. The demand for *more lands*, now made by a Company that has ignored, disregarded its obligations to the Government, to the public and to occupants of lands, is destitute of reason, justice or conscience.

4. But the Company for the purpose of enlarging its claim insists that it is entitled to indemnity for lands lost to it, by the conflict in the granted limits of the two roads.

It has no right to indemnity for lands partitioned to the Milwaukee Company in the overlapping limits.

The claim for such indemnity was fully met and answered by Secretary Lamar (6 Land Dec., 62, Record, 170), who says:

"It is urged by both companies that they are each entitled to indemnity for lands thus lost by the grant to the other. I am unable to conclude that such was the intention of Congress. To say that it was, would be to say in effect that in so far as the 10-mile limits of the two grants overlap, the purpose of the granting act was to make what would amount to a double grant. Each company got a moiety of the lands in odd-numbered sections within the common granted limits. Now should there be allowed to each company indemnity for the moiety lost by grant to another, a quantity of land equivalent to all the odd and even numbered sections in said common granted limits would be passed under the granting act. This I think could not be justified by any proper constructions of the grant. * * * The grant was of a moiety for each road within the common granted limits of both roads. This accords with the view expressed by the Supreme Court. (St. Paul & S. C. R. *vs.* Winona R., 112 U. S., 720; S. C. & St. P. *vs.* C., M. & St. P. R., 117 U. S., 408.) Either this is true, or Congress, by the same act, *twice granted the same lands.* To say that it did, or intended to do, this, would be to say that it acted unreasonably, or without a proper understanding of what it was doing. Now since *indemnity is allowed* ONLY for lands *granted*, and *lost from the grant*, and since in the common 10-mile limits of those two roads *only a moiety was granted*, it follows that neither company has any legal claim for indemnity on account of the moiety granted to the other."

See, also, Cedar R. Co. *vs.* Jewell, 61 Iowa, 410.

The granting act does not warrant *any title.* The failure by either company to get entire tracts in the conflicting limits, violates no promise of the Government and imposes no obligation beyond what is given. The granting act does not give indemnity lands for

lands *never granted.* As the moiety of the Milwaukee Company, was never granted to the Sioux City Company, and *vice versa*, neither can claim indemnity for lands granted to the other. The grant of a moiety to each, is a *reservation* from grant to the other. In L., L. & G. Co. *vs.* U. S., 92 U. S., it was said as to the indemnity clause that it—

"is *still subject to* and *limited by* the *provision*, which excludes all lands reserved at *the date of the grant*, and not simply those found to be reserved when the line of road shall be definitely fixed."

So Attorney-General Devens in a similar case said of a land grant act (16 Op., 513):

"It gives the company no title to indemnity for lands reserved from and excepted out of the grant."

To the same effect see Rogers *vs.* Atlantic & P. R. R. (Copp's Land Owner, July 15, 1886, Vol. XIII, No. 8, p. 92; *Id.* No. 12, p. 135.)

THE CONCLUSION is inevitable that the Company is not entitled to indemnity for the moiety in the overlap granted to the Milwaukee Company.

Within the granted limits of that portion of the road constructed there were, according to the "*adjustment*" of the land grant made by the Commissioner of the General Land Office, in 1887, as required by the Act of March 3, 1887, after deducting the lands inuring to the Milwaukee Company, only 279,439.80 acres. (Exhibit 26, Record, 185, 188, misprint Exhibit 29, and other Exhibits.) The Map, Exhibit 23, showing the adjustment of 1887. is not in the printed record. It was in evidence (Record, 55, par. 31), and is by agreement in decree (Record, 260) to be used. As the Sioux City Company *now* holds patents for 280,725.29 acres, it has an excess of 1,285.49 acres, for the value of which *the United States is entitled to judgment against it, as authorized by the Act of March* 3, 1887.

The adjustment of 1887 should control. The map of withdrawal, was not an "adjustment" at all; the "adjustment" and map thereof of 1887 was expressly required by the Act of March 3, 1887. The *final decision* of the Commissioner of the General Land Office, unappealed from, presumed to have the sanction of the Secretary of the Interior, should not now be disturbed.

Secretary Lamar, in his letter of July 26, 1887 (Record, 165–6), has said that:

"87,910.21 acres were patented inadvertently and *without authority of law.*"

THE CONCLUSION *is inevitable that the Company is not entitled to any of the lands now in controversy.* It has received *more lands* than it is entitled to.

ANSWER TO ARGUMENT FOR THE COMPANY.

The argument for the Company (Swan & Young, 40) urges that—

"Upon the definite location of the road the *title* to all of the lands in the odd sections in the place limits along the whole length of such located line * * * [not reserved, disposed of, or subject to homestead or preemption] vested in the defendant company or in the State of Iowa as trustee for the defendant. And the title to indemnity lands vested * * * when selections were made and approved by the Secretary of the Interior."

As to this it may be said:

1. The cases cited in support of this in effect hold, not *literally* that the *legal title* actually *vested*, but only a right *sub modo*. *Qui haeret in litera haeret in cortice.*

2. The Act of 1864 does *not vest a legal title.* The title of the act is *not* an *act granting*, but "an act *for* a grant." In Northern Pacific R. R. Co. *vs.* Majors, 2 Pacific Rep., 327, it is said that "the pre-

amble * * * recites that it is *an act granting,*" etc., thus differing from that now in question.

3. The Act of 1864 provides for the *issue* of patents as the *first* and *only* means of conveying *legal title.* Unlike the act cited in Northern Pacific Railroad *vs.* Majors, no portion of the grant could be made available *until lands were earned* by the construction of a 10-mile section of road, when patents were to issue. The clause for reversion to the United States in the Act of 1864, *in terms,* would reinvest title in the United States, but there must be office found before title reinvests.

4. The Act of 1864 provides "that said lands shall not in any manner be disposed of except as the same are patented." A fee simple only exists with absolute ownership and power of disposition.

In the Northern Pacific case, 2 Pacific Rep., the Court said:

"This power given to the Company to sell the lands designated *before* the *issue of* the *patent* is itself an interpretation by Congress of its intention to bestow a *present grant.*"

In Farnsworth *vs.* M. & P. R. R., 92 U. S., 65, it was said the purpose of a proviso, similar to that in the Act of 1864, was "to prevent alienation in advance of construction." Without a power of alienation there is no fee simple legal title vested.

5. In Sioux City & St. P. R. R. *vs.* Osceola, 43 Iowa, 321, the Court said:

"The State acquires *no title* * * * until the patent * * * issues."

Sioux City Co. *vs.* Osceola, 50 Iowa, 179; Rice *vs.* M. & N. R. R. Co., 1 Black, 379.

The CONCLUSION is inevitable that no legal fee passed to the State or to the Company until patent issued.

But if it did, it would not affect the power or duty of the Court in *this* case. The Court can render such decree as law or equity requires.

6. And, finally, on this point, the authorities already cited, under the FIRST PROPOSITION, showing that the land grant act, and its acceptance by the Company, constitute a *contract*, by which the latter agrees to construct sections of road as a *condition precedent* to the right to any lands, is absolutely conclusive evidence that there is no grant *in praesenti* which vests any fee simple title.

The CONCLUSION is inevitable that no fee simple title vested until patent issued.

FIFTH PROPOSITION.

THE EQUITY OF THE SETTLERS ON THE LANDS IN CONTROVERSY IS BETTER THAN ANY POSSIBLE EQUITY OF THE RAILROAD COMPANY.

This suit was commenced by the United States, upon the recommendation to the Attorney-General of Hon. L. Q. C. Lamar, Secretary of the Interior and late a Justice of this Court—made upon the application of settlers on the lands. (6 Land Dec., 54, Record, 163.) The Attorney-General, after mature consideration, deemed it proper to commence the suit.

Many of the lands are occupied by settlers. (Record, 53, par. 23; Record, 61, par. 51; Exhibit 35, Record, p. 248, Appendix C hereto.) The settlers made homestead and pre-emption settlements under conditions which not only *justified* them in so doing, but they were *invited* to do so both (1) by the State officers of Iowa charged with the duty of executing the provisions of the land grant act, and (2) by the proper officer of the United States—the Secretary of the Interior.

The settlers are not intruders, they sought homes on the lands they occupy by *authorized invitation*, and with the knowledge of the Railroad Company, AND WITH NO PUBLIC PROTEST FROM IT. This is readily shown.

The Iowa Secretary of State in his Report of October 1, 1879, referring to these lands, says:

"The lands not certified, as per the foregoing statement [including the lands now in controversy], amounting to 85,457.40 acres, are *withheld* from certification to said [Sioux City] Railway Company, on account *of the non-completion of the road* as required by the act of Congress making the grant."

March 16, 1882, the Legislature of Iowa, by act of that date, (Record, 210) resumed to the State "all lands granted or intended to be granted to the Sioux City and St. Paul Company" by "acts of Congress and of the General Assembly of the State of Iowa," because said company had *failed to complete said road* in the manner required by law, and within *ten years* from the date of the acceptance of the grant.

This forfeiture was unequivocally intended to apply to these lands now in controversy.

Thus it has been said (Plumb's U. S. Senate Rep. No. 45, p. 3; 49th Congress, 1st Session):

"After it became known that the Governor could not or would not certify additional lands to the railroad company under the State law of [March 13] 1874, [Record, 33] above quoted, the conviction that the lands patented to the State of Iowa, and which had not been certified to the railroad company, were public lands of the United States, became prevalent, and settlers began to go upon and improve them. A loud demand was made that they should be reconveyed by the State to the United States, and the Legislature of Iowa did thereupon pass" the act aforesaid.

February 6, 1883, the Hon. H. M. Teller, Secretary of the Interior, by letter to the Governor of Iowa, demanded the restoration to the United States of said lands, and declared that unless some early action is taken looking to that end it would become the duty of the Department to recommend a resort to legal proceedings for "their restoration." (Record, 167.)

The Iowa Secretary of State in his report for July 1, 1883, says:

"The letter of the Secretary of the Interior, aforesaid, has been published in many newspapers of the country, and has created a great excitement, with regard to the lands the State withheld from the railroad company. This office has received a great many letters, from persons both within and without the State, inquiring with reference to them, the *general impression* being that they were *speedily to be restored to the public domain*, and I am credibly informed that every quarter section of said lands in Plymouth County, and perhaps in Woodbury County, as well as *a large portion of the said lands elsewhere* have been settled upon and occupied in expectation of that event."

Again it has been truly and forcibly said:

"The letter of the Secretary of the Interior was promptly published, and occasioned great excitement among people far and near who were desirous of obtaining homes upon the public domain. The letter coupled with the other conceded facts in the case, was very properly regarded as settling the public character of the lands beyond controversy, and such as were then unoccupied were settled upon at once."

March 27, 1884, the Legislature of Iowa passed an act (Record, 212) with a—

"*Whereas*, It is desirable that ALL *lands* and rights to lands resumed by the State of Iowa, as aforesaid [by Act of March 16, 1882, Record, 210], should be conveyed to and vested in the United States to the end that such lands shall be *made subject to the use of actual*

settlers, as provided by acts of Congress relating thereto."

It is then provided that the Governor is directed to certify to the Secretary of the Interior all lands which have not been patented, except as to the lands in the counties of Dickinson and O'Brien. (Rep. Iowa Sec'y State, 1885, p. 49; Record, 213.)

The Secretary says of the Iowa Act of March 16, 1882:

"I think, however, that *the Courts would hold* that the *resumption act* of the Nineteenth General Assembly [March 16, 1882, Rep. Sec'y State, 1883, p. 99; Record, 211] *did apply to* ALL LANDS that had been patented to the State for building said [Sioux City] road, which were not earned by the said railroad company, whether such lands were in Dickinson and *O'Brien* Counties or elsewhere. The language of the law is plain."

This IS PLAIN. The *resumption* or *forfeiting act* did apply to all lands not certified or patented to the Company.

Thus the settlers on these lands were *invited* to go upon them, by the long continued invitations of the State and National Government, and without protest by the Railroad Company.

A refusal now on the part of either, to aid in securing to the settlers their homes, would seem to be a gross violation of good faith, and an outrage upon their rights.

In view of these considerations, it is respectfully submitted that this *Court should now accept as final* the action of the State of Iowa in withholding these lands from the Railroad Company.

Congress has recognized, not only the equity of the claim of the settlers, but their *absolute right*, in Act May 14, 1880 (21 Stat., 140); Act March 3, 1887 (24

Stat.. 556.) (See *Congressional Record*, March 12, 1886, p. 2275; March 13, 1886, Record p. 93, 43; Plumb's Senate Rep. Com. Public Lands, No. 45, 49th Congress, 1st Session.)

These acts were *contemporaneous* with the laws passed by the Iowa Legislature and the official proceedings of the State officers. They all looked to the condition of these lands and the occupancy thereof by the settlers.

In addition to the report of the Senate Committee on Public Lands on the subject of *these identical* lands, it is to be noted that House Report No. 1619, 49th Congress, 1st Session, April 10, 1886, on the bill which became the Act of March 3, 1887, says:

"The bill protects the rights of all *bona fide* settlers within the limits of railroad grants in *all* the States and Territories, whose entries have been heretofore erroneously canceled OR THEIR APPLICATIONS DENIED on account of any railroad grant or the WITHDRAWAL OF PUBLIC LANDS for railroad purposes (except such as relinquished possession of their lands, and such as acquired other lands under the public land laws), where they had *remained in possession* of the land, claiming right thereto, under ANY *claim*, under the general land laws of the United States."

And in aid of the *same purpose*, the matter contained in Senate Ex. Doc. No. 124, 49th Congress, 2d Session, was transmitted to the Senate by the Secretary of the Interior, March 2, 1887, and in which the lands now in controversy were included.

But until a decree is made quieting the title of the United States to these lands, the rights of settlers under these acts cannot be given to them.

Under the Act of March 3, 1887 (24 Stat., 556), the Attorney-General, in an opinion, November 17, 1887, to the Secretary of the Interior, held that the right to issue patents under the fourth section of said act does

not arise until the land shall have been legally determined to belong to the United States. (Copp's Land Owner, Dec. 15, 1887, vol. xiv, p. 214; 6 Int. Dept. Land Dec., 272, 276.)

The same has been held under the Act of April 21, 1876. (Wisconsin Central R. R. *vs.* Stinka, Secretary Lamar, Jan. 25, 1886, 4 Land Dec., 344; Wisconsin Central R. R. case, June, 1888; Int. Dept. and Land Dec., p.—. See 2 Op. Atty. Gen'l, 41; 5 Op., 7; Streeter *vs.* M., K. & T. Co., Feb'y 7, 1878, Schurz, Sec'y Int., Rep. 1878, Part 1, p. 63.)

THE DUTY OF THE UNITED STATES TO SETTLERS.

The United States, even without the aid of a statute, can, and, to protect the rights of settlers, is under obligation by bill in equity to procure the cancellation of patents improperly issued. (U. S. *vs.* M., K. & T. Co., 141 U. S., 358, 381.) And this duty is emphasized by the several acts of Congress protecting the rights of settlers.

The Interior Department, upon the advice of the Attorney-General, has held that, while the question of title is pending in Courts, under the conditions of these lands, homestead application cannot now be allowed, but that a refusal to allow them—

"cannot work any injury to the claimants as no *right is thereby interfered with.*"

(See Letter of Commissioner of General Land Office, March 26, 1894, concurred in by the Secretary of the Interior; Appendix A, B hereto. Also Brief of William Lawrence in case of Ard *vs.* Brandon, No. 141, October term, 1894, Supreme Court, United States.)

As to lands claimed by settlers, see Record, Exhibit 35, pp. 248-250; Record, 53, par. 23; Record, 61, par. 51. The list of lands claimed by settlers, with their

respective names as furnished to the undersigned, which includes some others besides those in Exhibit 35, p. 288, is hereto appended. (Appendix C.)

THE CONCLUSION is inevitable that the settlers on the lands in controversy should be protected in their rights.

If the claim of the Sioux City Company should succeed to any considerable extent, it will take from the settlers the lands on which in good faith they made their homes. The settlers do not occupy *all* the lands described in paragraph 21 of the bill. In any event it is respectfully submitted that they are entitled to be protected in the lands they occupy.

SIXTH PROPOSITION.

NO LAND COULD BE LAWFULLY PATENTED TO THE COMPANY BECAUSE THE STATE NEVER SELECTED A TERMINAL POINT ON THE MINNESOTA LINE AS REQUIRED BY THE ACT OF CONGRESS OF 1864 (Record, 11) AND THE IOWA ACT OF APRIL 3, 1866, CH. 134, 11 GENERAL ASSEMBLY. (Record, 14.)

The Act of 1864 makes a grant—

"for the purpose of aiding in the construction of a railroad from Sioux City * * * to the south line of * * * Minnesota at such point as the State of Iowa may select, between the Big Sioux River and the west fork of the Des Moines River."

The Iowa Act of April 3, 1866, accepts the grant "upon the terms, conditions and restrictions contained in said act of Congress," and it makes the Sioux City Company the beneficiary.

It then says:

"That SAID COMPANY shall locate and *definitely fix the line of route of said road*, as soon as practicable * * * and shall file a map showing such line or route in the office of the Governor * * * But the location of

such line or route, however, shall be considered FINAL, *only* so far as to fix the limit and boundary within which lands may be selected under * * * said act of Congress."

Under these provisions the Company could not acquire a right to any lands.

1. The *State* was required to fix the terminal point as a *condition precedent* to the vesting of any right. The State could only act by the lawmaking power. There was a scope of more than fifty miles within which the north terminus of the road might be fixed. Until the terminus *was fixed*, no line of road could be lawfully fixed. The Legislature had no authority under the act of Congress (1) either to authorize a *floating* or *movable* line of location, or (2) terminal point. The Iowa act was a mere *device* to enable the Company to fix a right to granted lands, and on its face was fraudulent and void—a palpable breach of trust. There were reasons why the Legislature should fix the terminus, and not the Company.

The Legislature would or should consult the public interest. and the necessity for a point to meet the wishes of the people concerned. The Company would locate where it (1) could *procure the largest amount of land*, and (2) where the least grading and expense would make its road wholly without reference to public utility or necessity.

2. This right to fix the terminus could not be by the Legislature delegated to the Company.

Legislative power cannot be thus delegated. (1 Dillon on Munic. Corp., 96; 2 Lawson Rights and Remedies, Sec. 3753*n*; Cooley Const. Lim., 133; People *vs.* Chicago, 51 Ills., 30; Harwood *vs.* St. Clair, 51 Ills., 130; Gage *vs.* Graham, 57 Ills., 144; Smith *vs.* Nelson, 18 Vermont, 511.)

Legal maxims say—*Delegata potestas non potest delegari. Vicarius non habet vicarium.*

3. The argument for the Company (Swan & Young, 51) says:

"It is charged in the bill (Record, 4, par. 13) and is admitted (Record, 51, par. 10) that the terminus * * * was fixed * * * under express legislative authority." (Citing R. R. Land Co. *vs.* Courtwright, 21 Wall., 310, 315–16.)

It is sufficient to say the bill, answer and agreed facts cannot change the law. The agreed facts admit:

"That the State * * * has never selected a point * * * as a terminal point." (Record, 51, par. 10.)

Then there is no lawful terminal point.

4. And finally on this point the Iowa statute *did not* delegate any power to the Company to FIX a terminal point. It did attempt to give the Company a tentative power—not to fix a terminal point, but only A, not THE FINAL "line of route" for the road—not FOR THE CONSTRUCTION of *the road*, but *only* to fix the boundary for the selection of lands. *That* was not a power to fix a terminal point, nor even to fix the line of road. It is to be presumed the Legislature *reserved* to itself the power, (1) *to fix the terminal* point, and (2) the *line or route of the road, both*. It must be presumed the Legislature thereafter omitted to fix either the terminal point or the route of road, *because* the Company failed to *commence* its construction at Sioux City. The Legislature *foresaw*, and then *saw*, the purpose of the Company not to comply with its contract to make the whole road, and hence refused to fix a terminal point or route for the *express purpose* of preventing the Company from securing any lands.

1. In view of these considerations, the authorities

already cited show that under the laws no right to lands could vest in the Company.

See *ante* Blakemore *vs.* Glamorganshire Canal Company; 2 Mylne & K., and Virginia & Truckee R. *vs.* Lyons County, 6 Nev., 68, and other cases cited in connection with them.

All the authorities apply here which were cited as to conditions *precedent* and *subsequent*, and *forfeiture* for failure to perform them.

The Secretary of the Interior has held that "an incorrect *terminal limit* cannot be recognized" when not accepted by the Interior Department. (Case of California & Oregon R. R. Co., July 20, 1894, 18 Land Dec., 22.)

THE CONCLUSION *is inevitable that the failure to fix a terminal point defeats any right to secure or hold lands.*

SEVENTH PROPOSITION.

THE COMPANY FAILED TO EARN, AND FORFEITED ALL RIGHT TO HOLD LANDS, BECAUSE THE LINE OF CONSTRUCTED ROAD SO FAR DEFLECTS FROM ITS LINE OF DEFINITE LOCATION AS TO DEFEAT THE RIGHT AND WORK A FORFEITURE.

The map of location and of construction of the road (Exhibit A to answer, Record, 32) shows the following facts:

1. So far as constructed, it nearly *all* deflects from the line of location.

2. The *deflection* for nearly half the constructed road is much of it but little less than ten miles from the located line.

3. At one point it is only about half a mile from the ten-mile limits.

It cannot be said *such a road* preserves the *identity* of the located line.

And for *reasons* herein stated, and on *authorities* hereafter cited, the United States might justly and lawfully claim a forfeiture of *all* the lands patented to the Company.

If *this* PROPOSITION can be maintained, it necessarily follows that the Company has no claim on the lands now in controversy.

But on the facts in this case, the question is NOT *one* of DEFLECTION ALONE, *and the cancellation of patents already issued to the Company.* It is NOT a question whether the Court will now disturb and *set aside* the action of officers charged with the duty of giving title to lands, but *it is*, whether *the Court will* (1) *sustain the action of the proper officers of Iowa in withholding the lands in controversy from the Company*, and (2) sustain the Legislature of Iowa in passing the Act of March 16, 1882 (Record, 211) in *resuming* its right to ALL such lands—that is, on declaring a forfeiture against the Sioux City Company.

And it is now respectfully urged on behalf of the settlers that the Court will not aid the Company in asserting a claim to the lands, because :

1. The DEFLECTION *per se* defeats it ;

2. The deflection as shown was *prearranged* and operates as a fraud ;

3. And it is part of a *series of frauds*, constructive if not actual, all having a common object to disregard the rights of the Government, the public, landowners and settlers.

On the general question of *deflection* and forfeiture thereby of lands patented, the following reasons and authorities are presented :

The granting Act of 1864 (Record, 11) requires a road on the line of definite location. The grant is—

"For the purpose of aiding in the construction of a

railroad from Sioux City * * * to the south line of * * * Minnesota at such point as the State of Iowa may select" within specified limits.

The Iowa Act of April 3, 1866 (Record, 14), accepts the grant and provides—

"That said Company shall locate and definitely fix the line of said road * * * and shall file a map showing such line or route in the office of the Governor * * * and in the office of the Secretary of State * * * and it shall be the duty of the Governor * * * to file * * * such map in the office of the Secretary of the Interior. * * * The said Company accepting the grant * * * shall take the same with the conditions imposed and the terms provided by this act."

The grant is of—

"Every alternate section of land, designated by odd numbers, for ten sections in width, on each side of said road," meaning the constructed road on the definite line of location.

Section 2 provides—

"That the sections and PARTS OF SECTIONS of road which by such grant shall remain to the United States within ten miles on each side of said roads, shall not be sold for less than double the minimum price," etc.

It logically follows that the location and the construction of the road must be on the line *exactly*, because the act regards "*parts*" *of sections*, so that the *ten-mile limits* shall not depart from the located and constructed road to the extent of the width of the smallest legal subdivision of a section—the width of a forty-acre tract.

A proviso to section one of the granting act says:

"That the lands so selected [for indemnity] shall in no case be located more than twenty miles from the *line of said roads.*"

Other provisions expressly or by necessary inference require a road on the *line* of *location.*

The indemnity lands are selected by the *line* of *location*. (16 Opinions Atty.-Gen., 462.)

Hence a construction on a *different line* will be a fraud (1) on SETTLERS who make homesteads on the faith of the location; a fraud (2) on *purchasers* of the reserved sections in the *granted limits*, who are charged the double minimum price, because of the location of the roadway, and (3) a fraud on the public in many ways.

The authorities already cited, show:

1. That the provisions for the construction of the road and on the *line of definite location* are *conditions precedent* to the right of the Company to any lands as fixed by its contract with the United States. (Farnsworth *vs.* M. & P. R., 92 U. S., 65; U. S. *vs.* Central Pacific R. R., 118 U. S., 238.)

2. That the failure to *maintain* and operate a road, on the line, is a breach of a *condition subsequent* in the act.

3. Other authorities show that no officer had power to waive the obligation of the Company to perform its contract.

4. That the acceptance of an illegal route or the issue of patents in violation of the contract, are *not conclusive* on the courts. (Kansas City R. *vs.* Attorney-General, 118 U. S., 682.)

THE AUTHORITIES SUPPORT THESE VIEWS.

The statute gives to the Company a *special limited power*, to locate its line of road. And this line so "definitely fixed" cannot be subsequently changed, as it would be by constructing its road on a different line.

The power to fix location is *exhausted* when once exercised, and hence *cannot be changed* as it would be by building a road on another line. Thus it has been said:

"I take it to be a sound principle that when a special tribunal is created, with limited power and a particular jurisdiction, * * * whenever the power given is

once executed, the jurisdiction is exhausted, and at an end; that the person thus invested with power is, in the language of the law, *functus officio*. (*Ex parte* Randolph, 2 Brock., 473; 10 Op. Att'y Gen'l, 259; Crepp *vs.* Durden, 2 Cowper, 640; Mills *vs.* Collett, 6 Bingham, 85; S. C. 19 Eng. Com. L. R., 11.)

On May 10, 1869, Secretary Cox, of the Interior Department, upon application of the McGregor and Sioux City R. R. Co., for leave to file a new map of definite location, said:

"After a road has been definitely located, the map thereof filed here and accepted, and the lands withdrawn, no specific authority is given whereby this Department can accept another location, and in the absence of such authority I must decline to give my approval to the map now presented."

So it is said:

"The power of the [railroad] company to *determine its location* when *once exercised* is exhausted. This is in accordance with the ancient rule that 'if a man once determines his election it shall be determined forever.'" (Pierce on Railroads, 254, citing numerous cases. Atkinson *vs.* M. & C. R. R. Co., 15 Ohio St. Rep., 32; Comyn's Digest title, Condstens, ch. 2; Co. Litt., 145; Griffin *vs.* House, 18 Johns. R., 397.)

It was held that a company whose charter authorized it to change the location of its track on account of difficulties of construction," cannot do so after its road has been constructed.

In Morehead *vs.* Little Miami R. R. Co., 17 Ohio Rep., 252, it appeared that the company, having constructed its road, claimed the right to *relocate* and reconstruct *between points named in its charter*. At the suit of landowners the Court *enjoined* the *change*, and said:

"The completion of this road *upon the route first located* exhausted all the power of the company. The force of the grant was then spent, and no matter how

necessary the change of location may be at present, the company must seek authority to make that change in some *legislative enactment* aside from their act of incorporation."

A railroad company has no authority to exercise the power of eminent domain or condemn lands for a right of way *on any other route* than that of *its location.*

This *precise question* is decided in Morehead *vs.* Little Miami R. R., 17 Ohio, 340. The company having constructed its road on one location, sought to exercise the right of eminent domain to condemn another location in *close proximity* to the *former* route. The Court denied the existence of such power and enjoined the attempt to do so. The authorities show that the *line of definite* location is as *firmly fixed* by *filing a map* of location in the General Land Office, as by the *construction of a road.*

Yet if the Little Miami Railroad Company could not lawfully condemn land for a new location, how can the Sioux City Company obtain authority to change its location—for the construction of a road deflecting from location is a change of location.

If a railroad company attempts to construct its road deflecting from its line of location, it may not only be *enjoined* from so doing, but if it makes its road so deflecting it is liable in *damages* as a *trespasser.*

Little Miami Railroad Company *vs.* Naylor, 2 Ohio St., 235. The Railroad Company having constructed its road *along a street,* changed the location and constructed a road *on the* [same] *street nearer to Naylor's house* than the original location. He sued to recover damages, and the Court, in affirming the judgment in his favor, said:

"The location of a railroad through a settled country will always produce a great change in the use of the

property along its track. Improvements are made in reference to the track *as located.* To change the track in many instances will produce as great damage to property as the making of a new road. * * * When it [the company] has made its selection [of the route] its rights over all the other territory ceases. * * * The act of the railroad company in changing their location being unlawful, the next question arises whether they are liable * * * for the damages, etc." (See Newton *vs.* A. B. R. R., 15 Gray, 27.)

This case shows that a railroad company cannot lawfully change a location even to *half the width of an ordinary street* in a city.

The case of Blakemore *vs.* Glamorganshire, 2 Mylne & K., has been cited *ante.*

It can make no difference in the application of the *principle* of these cases, even if there had been a change of a road previously *constructed.* The authorities cited show that when a *location* is *once made*, it cannot be changed—in other words, the *location* just as completely imposes on a company a duty to *construct* its road on *the line of location*, as to *maintain* its construction on the line once *constructed.* What *reason* is there in saying a company cannot change its line of location, but may construct its road *away* from such line? What is the utility of having a line of location, if a road may be constructed deflecting from it? It may be said it marks out and *fixes the limits of a land grant*—so it does. But the principle applies to *all locations of all roads*, non-land-grant roads, as well as land grant.

In Grinnel *vs.* Chicago, R. I. & P. R., 103 U. S., 739, it appeared that the Act of May 15, 1856, made a land grant for a railroad, the line of location of which was duly filed. (11 Stat., 9.) The Act of July 2, 1864 (13 Stat., 95), authorized a *change of location.* The railroad company accordingly—

"So changed the route as to place it at *some points*

south of the 15-mile limit of the grant as ascertained by the first location."

Settlers on the lands claimed that the change of location changed the grant, and that they should hold the land within the limits of the first location for homesteads. The Court said *they* could not avail themselves of the objection that the constructed road deflected from its line of location, but that the United States could.

Miller, J., said:

"Did their [R. R. Co.'s] construction of the road on the new line annul or defeat, *without further action* on the part of the United States, the title thus vested * * *

"If no law had been passed authorizing the change of route, it is possible the Government might have reclaimed [ALL] these lands as forfeited by reason of the change to which it had not consented. But Congress did consent to the change."

On February 2, 1880, Mr. Attorney-General Devens, in an opinion addressed to the Hon. Secretary of the Interior, said:

"The law clearly contemplated that the road was to be constructed according to the line of definite location. For this purpose lands along it were withdrawn from the market and public information given by which parties purchasing property in the vicinity were to be governed. The lands in question were separated and set apart from the public domain, and the adjustment of the grant was to proceed *according to the line thus definitely located. Whatever adjustments, therefore, of the grants is made must be made according to the line of definite location.* To hold that the grant could be adjusted according to *a different and distinct line*, upon which a road, perhaps answering in general terms the description given in the granting act, might be constructed, would be to hold that there were actually two

grants of land. It cannot be possible that the grantee, having made his grant definite and having had the land granted, separated from the public domain, can take it up and relocate it so as to appropriate other lands. The grant lost its character of a float by the definite location. It is, therefore, necessary in adjusting the grant, that it should be adjusted according to the line of definite location." (16 Op., 462.)

In Van Wycke *vs.* Knevals (106 U. S.. 366), the Supreme Court said:

"The route must be considered as 'definitely fixed' when it has ceased to be the subject of change at the volition of the company. Until the map is filed with the Secretary of the Interior, the company is at liberty to adopt such route 'as it may deem best after an examination of the ground has disclosed the feasibility and advantages of different lines.' But when a route is adopted by the company, and a map designating it is filed with the Secretary of the Interior, and accepted by that officer, the route is established. It is, in the language of the act, 'definitely fixed,' and cannot be the subject of future change, so as to affect the grant, except upon the legislative consent." (See K. P. Co. *vs.* Dunmeyer, 113 U. S., 629.)

THE CONCLUSION *is irresistible, that a line of definite location once filed with the Commissioner of the General Land Office cannot be withdrawn or changed.*

And it is equally clear that the CONTRACT duty of the Company is to construct the road *on the line of location.*

The opinion of Attorney-General Devens of February 2, 1880 (16 Op., 462), was given in answer to two inquiries, one, whether a land grant was to be adjusted according to the line of definite location or the line of construction.

As to this he said:

"To hold that the grant could be adjusted according to a different and distinct line [from that of definite

location], upon which a road perhaps answering *in general terms* the description given in the granting act might be constructed, would be to hold that there were actually two grants of land. It cannot be possible that the grantee, having made his grant definite and having had the lands granted separated from the public domain, can take it up, and relocate it, so as to appropriate other lands."

It may be here remarked that it will "appropriate other lands" if the constructed road deflects to the extent of the smallest legal subdivision of land—40 acres.

He then proceeds to show that if a railroad company makes a line of road "answering *in general terms* the description given in the granting act," but "upon a different line from that of definite location," the company will *lose its entire grant*. He says:

"The * * * inquiry is, whether, if the road be built upon a line different from that of definite location, the lands ascertained by the definite location can now be patented to the State [for the R. R. Co.]?

"If this could be done, its effect would be unfortunately obvious. A tract of country not receiving the benefit of the road would be charged with the burden of having its lands granted to the railroad company, whose roads did not accommodate it. Persons owning property in farms or villages, who had purchased with the belief that the road was to be constructed according to the line of definite location, would find that they were in some instances many miles distant from the road, the benefits of which they had expected to receive.

"In order to entitle the State [for the railroad company] to the benefit of the lands granted, it is necessary that the road should be constructed according to the line of definite location."

In Kansas Pacific Railway Company *vs.* Dunmeyer, 113 U. S., 634, Justice Miller, in discussing the effect of a similar statute, emphatically says:

"The company makes it own preliminary and *final surveys* by its own officers. It selects for itself the *precise line on which the road is to be built*, and it is by law bound to report its action by filing its map with the Commissioner, or rather in his office. The line is then fixed. The company *cannot alter it*, so as to affect the rights of any other party. (P. 634.) * * * The company *had no absolute right until the road was built* [on the line of definite location] or that part of it which came through the land in question." (P. 641.)

And it is to be specially borne in mind that the *line of location*, and not the *line of construction*, fixes the granted and indemnity *limits*—the ten and twenty mile limits of railroad grants.

If a homestead entry is made immediately on the line of definite location at a point where a depot must inevitably be built, or a village spring up, a departure of a mile in construction may defeat the whole purpose of the homestead entry. It is quite as important to protect the *rights* and *interests* of settlers and the observance of *good faith* to them, as it is to give to railroad companies the *same benefit* from violation of law, duty and good faith as to the observance of all these.

If this be not so, then a railroad company may make such location as to secure valuable lands, and then construct on a departure therefrom, because less expensive, and thus profit by its failure to file a true line of location. It may make a circuitous location through unappropriated lands to secure them, and then construct a straight road through reserved lands. This would enable it to profit by a disregard of the statute. The line of this road was located over two and a half miles west of Humboldt, thereby extending its grant westward, so as to *avoid in part* an overlap in its grant with that of the L., L. & G. road, thereby securing more land, but its road is made on a line touching Humboldt. The principle of law applies here that :

"Statutes are not to be *evaded*, any more than they are to be disobeyed. (Sedgwick Stat. (2d. ed.), 74; Hannay *vs.* Eve, 3 Cranch, 242; Humphrey *vs.* Chamberlain, 1 Kernan, 274.) That which could not be done directly, * * * cannot be done indirectly. (4 Coke, 24 *b.*; Caldwell *vs.* Mayor, etc., 9 Paige, Ch. 575; Broome's Legal Max., 832; Hardcastle Stat. Law, 24.)

If a railroad company may file a circuitous line of definite location through fertile and valuable lands, and thereby secure them, and the large profits accruing therefrom, and then by a departure in construction shorten the line and save expense, the result is a practical fraud—a fraud in the contrivance for procuring valuable lands, a fraud on settlers who find no road where one was promised, a fraud on the Government and on settlers by taking valuable lands where a location on the line of construction would have given inferior lands to the railroad company, and left the valuable tracts for homestead entries.

There is no authority for saying that a right to lands in place, or indemnity lands, can attach along a portion of road which deflects from the line of location.

Attorney-General Devens, as already shown, said:

"In order to entitle the State to the benefit of the lands granted, it is necessary that the road should be constructed according to the line of definite location."

He then proceeds to say:

"Some deflections must, in many cases, be expected from the line of as road definitely located; but it is for the Department to determine whether or not these make of it a different road, or whether there is substantial compliance with the line of definite location."

The only effect of this, *if it be sound*, is that "deflections in their character immaterial" do not defeat the entire grant. (2 Copp's Public Land Laws, 793.) But if, as in this case, there be a deflection which is *locally*

material, covering probably whole sections of road, certainly no grant or right to indemnity can attach as to *that portion*.

Grants are made and indemnity provided as compensation for each section of road, made on line of definite location. Where there is no such road, no land is earned.

OFFICERS OF THE UNITED STATES CANNOT AUTHORIZE A DEFLECTION, OR WAIVE A RIGHT OF FORFEITURE RESULTING THEREFROM.

The Secretary of the Interior has no *discretion* to permit a road to be constructed deflecting from the line of location.

In the Brewster case, 118 U. S., 682, the Court said:

"While we are not disposed to hold the action of the officers of the Land Department of the Government as absolutely conclusive upon such a subject as this, we see no reason why their deliberate action with careful attention and all the means of ascertaining what was right should be set aside in *this case*."

This was not said as to the effect of a deflection, for the Court held there was none. But the Court said enough to show that public officers cannot conclude the United States by accepting a road not made as required by law.

Clearly, if he cannot permit a *change of location*, he cannot *permit a construction* on a line *different* from that of *location*.

To do so would be to hold that the location is *without effect*, and may be repudiated and departed from at pleasure.

On February 16, 1857, Attorney-General Cushing said on this subject:

"That the State may lose this inchoate title [acquired under a land-grantact] by change of location." (8 Op., 390.)

The Supreme Court has determined that the acceptance by a railroad company of a land-grant constitutes a *contract* between it and the United States, by which the company *agrees to construct* a road *as required by the granting act*. (U. S. *vs.* Central Pacific R. R., 118 U. S., 238.)

Now, if the *law requires a road to be constructed on its line of* definite location, then an officer who assumes a power to authorize it to be constructed elsewhere assumes a power to *set aside solemn contracts* with the Government, and to nulify the law.

No officer can waive such location as the law requires. Andrae *vs.* Redfield, 12 Blatchford, 407. Andrae had a claim to be repaid excess of duties paid under protest to the Collector of Customs. The statute of limitations had nearly run in favor of the Collector when the Auditor of the Custom House agreed that the statute of limitations should not be pleaded. Subsequently Andrae brought suit against the Collector, who pleaded the statute. Andrae filed a bill in equity to enjoin the defendants from pleading the limitation. The Court said:

"Neither the Government officers, nor any authority of the Government, can create a liability, either at law or in equity, which he [the defendant] did not incur, and we deny that either a subordinate in the New York Custom House, or even the Secretary of the Treasury himself, could deprive the defendant of his right to defend by any defense valid and legal for his protection."

It was suggested that the action was "practically against the Government." To this the Court said:

"The Auditor of the New York Custom House had no authority whatever to bind the Government."

The Supreme Court on appeal, affirmed a decree dismissing the bill. (98 U. S., 225.)

So in Whiteside *vs.* United States, 93 U. S., 256, it is said:

"Different rules prevail in respect to the acts and declarations of public agents from those which ordinarily govern in the case of mere private agents. Principals in the latter category are in many cases bound by the acts and declarations of their agents, even where the act or declaration was made without any authority, if it appears that the act was done or the declaration made by the agent in the course of his regular employment. But the Government or public authority is not bound in such a case unless it manifestly appears that the agent was acting within the scope of his authority, or that he has been held out as having authority to do the act, or was employed in his capacity of a public agent to do the act or make the declaration for the Government (Story Agency, 6 ed., 307). Lee *vs.* Monroe, 7 Cranch, 366. * * * Individuals as well as courts must take notice of the extent of authoity conferred by law upon a person acting in an official capacity, and the rule applies in such a case that ignorance of the law furnishes no excuse for any mistake or wrongful act." (State *vs.* Hayes, 52 Mo., 578; Delafield *vs.* State, 26 Wend., 238; People *vs.* Bank, 24 Wend., 431; Mayor *vs.* Reynolds, 20 Md., 10.)

Nor can it be said the action of the Secretary of the Interior in certifying indemnity land selections along a deflected portion of road gives any right to such lands. Any such claim is completely denied by a principle laid down in St. Paul & Sioux City R. R. Co. *vs.* Winona & St. Peter R. R. Co., 112 U. S., 733:

"It is no answer to this to say that the Secretary of the Interior certified these lands to the State for the use of the appellant. It is manifest that he did so under a mistake of law. * * * This erroneous decision of his cannot deprive the Winona Company of rights. * * * " (Johnson *vs.* Towsley, 13 Wall., 72, 80; Gibson *vs.* Chouteau, 13 Wall., 92, 102; Shepley *vs.* Cowen, 91 U. S., 330, 340; Moore *vs.* Robbins, 96 U. S., 530, 536.)

No error of any officer, either of fact or of law, can give to any officer power to do what the statute *does not authorize*, or make valid a patent unlawfully issued, when its validity is *directly* attacked in a suit by the United States. This is shown by the authorities just cited.

When Attorney-General Devens was considering the subject-matter of his opinion, above mentioned, it was:

"Suggested that the Governor having made his certificate under the fourth section of the granting act [corresponding with Sec. 3, above quoted, of the Act of 1866], the Secretary of the Interior cannot inquire whether the road is or is not constructed according to the line of definite location; that the Governor is the sole judge of the compliance of the company."

If this were so for purposes of executive action, it is not so when a judicial inquiry as to the validity of the patent is made.

But the Attorney-General denied the conclusiveness of the certificate for executive action.

He said:

"But the Secretary [of the Interior] must determine that the road has been constructed. The responsibility of issuing patents clearly imposes on him that duty, and as a necessary incident, the duty of determining that the road has been constructed as located."

A railroad company cannot "take advantage of its own wrong" in constructing a road deflecting from the line of location, by pleading that some officer of the Government concurred in the wrong.

The Act of 1864 does *not* devolve on the Governor any duty of certifying that a road is made on the line of definite location, but only authorizes him to certify as to the *kind of road made*.

To say that the Secretary of the Interior can permit

a company to disregard and depart from *points fixed in an act of Congress*, is to say that he may in part *repeal an act of Congress*. It has already been shown in numerous acts of Congress that there is no power to *change* either the *beginning* or terminal point of a road, or a branch, except by authority of Congress. (See Act April 19, 1871, 17 Stat., 5; Act July 1, 1864, 13 Stat., 339.) The power to fix the points of a road in a land-grant act is LEGISLATIVE. The power to change them is legislative.

An attempt to do either by executive authority would be to invade the independent power of Congress.

The Secretary of the Interior is not charged with any duty in fixing the definite location of a road.

Thus the Supreme Court has said that—

"The act which fixes the line of *definite location* is the act of *filing the map or plat of the line in the office of the* Commissioner of the General Land Office. * * * Up to that time the right of the company to no definite section or part of section [of land granted in place] is fixed. * * * The right of the company becomes by that act vested. * * * IT IS AN ACT TO BE DONE BY THE COMPANY.

* * * * * *

"The company makes its own preliminary and *final surveys* by its own officers. It selects for itself the *precise line on which the road is to be built*, and it is by law bound to report its action by filing its map with the Commissioner, or rather in his office. The line is thus fixed." (Kansas Pacific R. R. Co. *vs.* Dunmeyer, 113 U. S., 634.)

Certainly, if the company would file a map of definite location, which did not pass through *points* required by Congress, it would be the duty of the Secretary to refuse all land-grant aid. (16 Opinions, Attys.-Gen., 462.) He would, in fact, in such cases, be without power to give such aid.

But he has no power to compel a company to locate its road, even through the points fixed by Congress. His illegal selection of indemnity lands therefore settles nothing as to any *proper point* through which a road should run.

When a power is given to be exercised only *on the performance of expressly required conditions*, its exercise without such performance is in *excess* of authority, and is void.

The United States is not *estopped* from controverting the legality of the action of the Secretary of the Interior in selecting indemnity lands. Any such claim is completely denied by a principle laid down in St. Paul & Sioux City R. R. Co. *vs.* Winona & St. Peter R. R. Co., 112 U. S., 733, already cited. (K. C. & S. K. R. R. *vs.* Atty.-Gen. Brewster, 118 U. S.)

Congress had a right to *fix points*, TO, and THROUGH which the M., K. & T. road should run. The *law* fixed the *line of construction* as firmly on the *line of location* as if incorporated in an act of Congress.

The *power* of the company was thus *fixed* and *limited* by law.

And Kent, in discussing the *execution of powers*, says:

"It is the plain and settled rule that the conditions annexed to the exercise of the power *must be strictly complied with*, however *unessential* they might have been if no such precise directions had been given. They *are incapable of admitting* any *equivalent* or *substitution*, for the person who creates the power has the undoubted right to create what checks he pleases to impose, to guard against a tendency to abuse." (4 Kent, 330.)

The Secretary of the Interior and other *general* officers have *general powers*, conferred by the general statutes. Even under *such* statutes the powers of public officers *must be strictly pursued*, and in the absence

of specific statutory authority the act of such officer *does not bind the Government.*

Parsel *vs.* Barnes & Bro., 25 Ark., 261, 272; Green, Etc., *vs.* Beeson, 31 Ind., 7; State *vs.* Bank of State, 45 Mo., 528; Andrae *vs.* Redfield, 12 Blatch., C. C., 407; S. C. 98 U. S., 225.

But the power given by the land-grant acts to the Secretary of the Interior and other officers, is a *special statutory power*, to be *strictly construed* and "must be *pursued* in *strict compliance* with the [express] terms of the statute." (Bishop, Written Laws, 119, and cases cited; Sedgwick on Statutes, 2d ed., 76.)

THE CONSEQUENCES OF DEFLECTION.

These are the same as the failure to complete the entire line of road. They have been discussed with authorities in considering that subject.

U. S. *vs.* Central Pacific, 118 U. S., 238; 4 Kent Com., 125; Indianapolis *vs.* Hood, 66 Ind., 580; C. C. R. *vs.* Coburn, 91 Ind., 557; 17 Am. and Eng. R. R. cases, 44, note.

The deflection is a constructive fraud, the effect of which has been already discussed.

THE CONCLUSION *is inevitable that the deflection defeats all claims by the Company to lands.*

EIGHTH PROPOSITION.

VIII. THE LEGISLATURE OF IOWA HAS DECLARED (1) ALL THE LANDS NOW IN CONTROVERSY FORFEITED TO THE STATE, AND (2) HAS REINVESTED THE UNITED STATES WITH THE TITLE THERETO, AND (3) THE FORFEITURE IS FINAL AND CONCLUSIVE ON THE COMPANY.

This proposition is by no means essential to support either (1) the claim of the United States or (2) of the settlers on the lands. It is enough that the State of

Iowa has deemed it just, legal and proper to withhold these lands from the Company. But if it be covered, it contributes the judgment of the Legislature to the claims of both. And a proper construction of the laws supports the proposition.

1. *The Legislature of Iowa has declared* ALL *these lands forfeited to the State.*

This was done by the Iowa Act of March 16, 1882. (Printed Record, 210.) It has already been shown that this act applies to *these lands.*

2. *The Iowa Act of March* 27, 1884 (Printed Record, 212), *operated to reinvest the United States with the title to all said lands.*

The first section applies to *all the lands*, and as to them its language is:

"*Are hereby* relinquished and conveyed to the United States."

No patent is necessary. This is a grant *in praesenti.*

It is true the SECOND section directs the Governor—

"To certify to the Secretary of the Interior * * * all lands * * * which have not been patented by the State to the Sioux City and St. Paul Railroad Company."

This merely furnishes evidence to *identify* the lands, but the transfer of title is operative without it.

The act then provides that—

"The list of lands so certified * * * shall be presumed to be the lands relinquished and conveyed by section one of this act: provided, that nothing in this SECTION * * * shall be construed to apply to lands * * * in the counties of Dickinson and O'Brien."

This does *not limit* the effect of section one in conveying, *as it does,* ALL the lands including those in Dickinson and O'Brien Counties.

If such had been the purpose this section would have declared—

"That nothing in this ACT * * * shall apply to lands in the counties of Dickinson and O'Brien."

But it carefully does *not* use the word "*act*"—it uses the words "THIS SECTION." Hence the first section is left to apply to ALL the lands referred to, and included in the former act, "chapter 107 of the acts of the Nineteenth General Assembly."

It cannot be supposed the Legislature intended by this Act of 1884 to *repeal* or *modify* the prior Act of March 16, 1882 (Record, 211), WHICH reserved ALL the lands to the State. There is no *express* repeal. Repeals by implication are not favored. (McCool *vs.* Smith, 1 Black, 459; U. S. *vs.* Walker, 22 How., 299; Galena *vs.* Amy, 5 Wall., 705; Henderson's Tobacco, 11 Wall., 652; Arthur *vs.* Homer, 96 U. S., 137; Chew. Heong *vs.* U. S., 112 U. S., 536.)

And the second section of the Act of 1884 is entirely consistent and reconcilable with the theory that section one of this act, and all of the former Act of 1882, *remained in force, forfeiting all the lands to the State,* and *then reinvesting the title* to all in the United States.

The *proviso* to section two of the last act has a distinct purpose. The previous part of the section provided for two matters:

1. It directed the Governor to certify to the Secretary of the Interior a list of the forfeited lands not patented by the State to the Sioux City Company.

2. It says the list of land so certified shall be presumed to be the lands conveyed to the United States by section one of this act.

Then the effect of the *proviso* is simply that:

1. The Governor is NOT directed to certify to the

Secretary of the Interior a list of the forfeited lands in Dickinson and O'Brien Counties. This, however, only *withheld from the Secretary* of the Interior the presumptive evidence of the forfeited lands in these two counties. The ultimate right was left to be determined thereafter, either in the Courts, or otherwise. Its *purpose was to secure the rights of the settlers.* This is shown by the history already given.

2. The list of forfeited lands so certified (not including, as it would not, the lands in these two counties) shall NOT be presumed to include ALL the lands *conveyed to the United States by section one of this act.*

In other words, the effect of the proviso is merely to insert the word "*not*" in the two preceding provisions of that section.

Or in still other words, section two merely says:

1. The Governor shall give evidence of all the forfeited lands, except that he shall not give evidence of the forfeited lands in these two counties, but leave the United States to ascertain them otherwise, or leave them in a condition that the State could protect the settlers.

2. The LIST of forfeited lands shall not include the forfeited lands in these two counties.

There was a *reason* for this *proviso:*

The Secretary of the State of Iowa had not the means of making an *exact list*, giving lands in place, and indemnity lands in these two counties.

Thus the Secretary of State, in his report of July 1, 1883, p. 100, *after* the forfeiting act was passed, *quoting the act in full*, and referring to the fact that the United States had patented to the State, in aid of the Sioux City Company, 322,421.91 acres, and noticing the fact that some of these were in the overlapping limits of the two roads, he says:

"I am unable to give this quantity exactly, *as there*

is no official diagram in this office of the land grant limits of said roads."

Again the Secretary in his Report of July 1, 1885, p. 48, after referring to the forfeiting act of the Nineteenth General Assembly, March 16, 1882, again refers to the difficulty of ascertaining or identifying the lands forfeited, and says:

"Now this [forfeiting act] was strong and forcible language, apparently; but after the act passed and took effect, who could tell by a perusal thereof *what lands had been resumed?* Who was to determine the question as to which lands were earned and which not earned?"

And he concludes that even under the operation of the Act of March 27, 1884:

"That the Courts would hold, that the resumption act [of 1882] of the Nineteenth General Assembly aforesaid, did apply to ALL lands that had been patented to the State for building said [Sioux City] road which were not earned by the said railroad company, whether such lands were in Dickinson and O'Brien Counties, or elsewhere."

It has been repeatedly held that the *history* of an act may be employed to aid in ascertaining its meaning.

Thus in Railroad Company *vs.* Brewster, Sup. Court, October term, 1886 (118 U. S., 682), the Court in construing railroad land-grant acts, adopt as proper to be considered "the *history* of the legislation of Congress and of the State of Kansas."

> Blake *vs.* National Bank, 23 Wall., 307; Aldridge *vs.* Williams, 3 How., 9; U. S. *vs.* Union Pacific R. R. Co., 91 U. S., 72; Bishop Written Laws, 77; Minis *vs.* U. S., 15 Pet., 241.

If such history is to be used in aid of railroad companies, it will, of course, be equally employed in enabling the Government and settlers to ascertain their rights.

And there is, in addition, the *contemporaneous official construction* given to these acts, both by the Iowa Secretary of State and Secretary Teller of the Interior Department, which is the strongest possible evidence of the meaning of the act as declared in the maxim *contemporanea expositio est optima et fortissima in lege.*

Courts will generally adopt such construction of acts by executive officers. (U. S. *vs.* Moore, 95 U. S., 763; Edwards *vs.* Darby, 12 Wheat., 210; U. S. *vs.* Bank, 6 Pet., 29; U. S. *vs.* MacDaniel, 7 Pet., 1; Smythe *vs.* Fiske, 23 Wall., 374; U. S. *vs.* Pugh, 99 U. S., 265; U. S. *vs.* Bowen, 100 U. S., 511; Swift Co. *vs.* U. S., 105 U. S., 695.)

One reason is that, as *in this case*, people have acted on such construction. The settlers here have acted on it. Equitable considerations now require that they shall not be permitted to suffer.

It cannot be deemed possible that the Court can so construe these legislative acts as to say they do not invest the United States with the title to all these lands.

Indeed, if there could be doubt as to the meaning of these statutes, as there is not, it is to be resolved in favor of the United States, and against the claim of a land grant.

In construing acts relating to land grants, the rule is that—

"Nothing passes [under the land-grant acts] but what is conveyed in *clear* and explicit language." (11 Peter, 544; L., L. & G. Co. *vs.* U. S., 92 U. S., 733.)

The lands so forfeited, and the title to which has been thus reinvested in the United States, are *clearly identified.* Thus the Iowa Secretary of State in his Report, July 1, 1883, p. 52, says:

"The Register of State Land Office, in a communication to the Commissioner of the General Land Office,

dated November 22, 1882, and at said Commissioner's request, furnished him with a list by particular description of the 85,447.40 acres withheld from patent to the [Sioux City] Railroad Co. by the State authorities; so that this evidence is before the land department of the General Government, which with a copy of the aforesaid act of the aforesaid Twentieth General Assembly would possibly be a *sufficient exhibition of the lands relinquished and conveyed by said act.*"

The Secretary of the Interior in his letter of February 6, 1883, to the Governor of Iowa, treats these lands as identified.

A list of the lands is given in the Report of the Iowa Secretary of State, July 1, 1883, pages 96, 97, 98.*

Thus the lands are fully *identified.*†

The conclusion is that ALL *these lands have been forfeited to the State and the title thereto reinvested in the United States.*

But the question whether the Iowa statute has invested the United States with the title to these lands, or not, is really now not essential. It has been shown that the Iowa Act of March 16, 1882 (Record, 211) *resumed* ALL the lands not patented to the Sioux City Company, and thus declared its claim *thereto forfeited.*

3. THE IOWA LEGISLATURE CLOTHED WITH THE POWER TO DECLARE THE FORFEITURE, ACTING ON EVIDENCE IT

*Of the 85,457.40 acres of forfeited lands, there are in Woodbury and Plymouth Counties 26,017.33 acres, for which see Iowa Sec. State Rep. 1882, pp. 51, 52. And it said (p. 53) "that the lands [in these counties] so relinquished [by the list made under Sec. 2 of the Act of March 27, 1884] are not claimed by the Chicago, Milwaukee and St. Paul Railway Company, and are no part the lands in dispute between the two companies" [in Chicago Co. *vs.* Sioux City Co., 117 U. S., 406].

The residue of the 85,457.40 being 59,440.07 [of which as said in the Report of the Iowa Sec. State, 1883, p. 96], there are in O'Brien County 55,297 21, there fully described.

†In a contest between two railroad companies, the land to which each is entitled can be ascertained and partitioned between them. (Sioux City Co. *vs.* Chicago Co., 117 U. S., 406.)

As to claim by the Government and the necessity of identifying see U. S. *vs.* B. & M. R. R. Co., 98 U. S., 334; R. R. Co. *vs.* Brewster, Oct. Term, 1886.

ADJUDGED SUFFICIENT, AND WHICH, IN THE EYES OF JUSTICE AND ALL HISTORY, IS SUFFICIENT, ITS DECISION IS FINAL AND CONCLUSIVE, AS AGAINST THE SIOUX CITY COMPANY, AND CANNOT BE COLLATERALLY IMPEACHED, NOR IS THERE ANY MODE BY WHICH THE RAILROAD COMPANY CAN DIRECTLY IMPEACH IT.

Congress, by the Act of March 3, 1887 (24 Stat., 556) and the United States, by filing the bill in this case have *ratified* and *united in* the forfeiture, and now, on *behalf of settlers*, is asking a decree to forever bar any claim by the Sioux City Company, as this Court has in principle declared its duty to settlers is (M., K. & T. R'y Co. *vs.* U. S., 141 U. S., 381) in order to perform its obligations to them.

A. It is well settled that when a legislative body has authority to *judge of the facts* which call for the exercise of its power in the enactment of a law, its decision is *final* and *conclusive*.

> U. S. *vs.* Marigold, 9 How., 560; Metropolitan Bank *vs.* Van Dyck, 27 New York, 445, 450; 1 Hamilton's Works, 118, 120; McCulloch *vs.* Maryland, 4 Wheat., 419; Van Fleet on Collateral Attack, *passim*.

The same principle applies as to public officers. (U. S. *vs.* Wright, 11 Wall., 648; Allen *vs.* Blunt, 3 Story, C. C., 745; Attorney-General *vs.* Brown, 1 Wis., 522.)

B. The granting act delegated to the State of Iowa certain powers as agent and *trustee* of the United States. The Railroad Company consented that the State should so act and administer the trust.

The State became a *naked trustee*. (Rice *vs.* M. N. R. R., 1 Black, 379.)

The United States might object to the mode in which the State administered the trust in several particulars. But the Government now assents to and ratifies the

action of the State in withholding the lands in controversy from the Railroad Company. There is no judicial power to control the action of the State thus assented to by the United States. The Railroad Company having assented to the conditions of the granting act, and the Iowa act thereunder, is now estopped from objecting to the reservation of the lands in controversy.

The CONCLUSION is inevitable that the *Sioux City Company* cannot call in question the forfeiture declared by the Legislature.

ANSWER TO POINTS IN THE BRIEF FILED BY COUNSEL FOR APPELLANTS.

The foregoing brief answers much of the able argument of the learned counsel for the appellants. But it may be proper to notice some other points therein.

INNOCENT PURCHASERS.

It is claimed in the brief for appellants that the trustees in the trust deed or mortgage on the lands are innocent purchasers. (Swan & Young, brief, 27, 126.) This claim cannot be supported.

1. The granting Act of 1864 (Record, 13, sec. 4, last proviso), declares as to the lands:

"That said lands shall not in any manner be disposed of or *encumbered* except as the same are patented under the provisions of the act."

2. A mortgage by a railroad company on lands before it receives the legal title by patent gives the bondholding creditors no equity which can be enforced. (Chamberlain *vs.* St. Paul & S. C. R., 92 U. S., 299.)

3. Even if the Sioux City Company had an *equity* in the lands—as it had not—the grantees of such equity do not occupy the position of innocent purchasers:

"The rules respecting a purchaser without notice * * * apply fully only to the purchaser of the *legal*

estate. Even the purchaser of *an equity* is bound to take notice of any prior equity." (Vattier *vs.* Hinde, 7 Pet., 271; Hallet *vs.* Collins, 10 How., 174; Shaw *vs.* Caig, 7 Cranch, 34.)

4. The Act of March 3, 1887 (24 Stat., 556), is a legislative construction of the granting act to the same effect. The Act of 1887, section 4, provides:

"That a mortgage or pledge of the lands by said company shall not be considered a sale for the purpose of this act."

The CONCLUSION is that the mortgage trustees are not innocent purchasers.

WHAT LANDS SHALL BE RESTORED TO THE UNITED STATES?

The lands described in paragraph 21 of the bill (Record, 7, 8), are partly within the 10-mile limits, and partly within the indemnity limits of the 50 miles of completed road of the Sioux City Company.*

The brief for the Company (Swan & Young, p. 121–2) says:

"When there is a question as to whether an excessive quantity of the lands that have inured to the grant has been patented on completion of 10-mile sections the excess (on the plaintiff's theory) must be looked for *first* in the lands not coterminous with the completed road, and afterwards in the coterminous lands lying farthest from the place limits of the grant; and none of these lands are in either of these two classes. * * * The defendant cannot be deprived of lands properly patented, merely because other lands have been improperly patented."

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*The bill includes 21,979.85 acres. The brief for the Sioux City Company states 15,281 09 acres within the place limits, and 6,728 76 within indemnity limits; total, 22.009.85. (See Record, agreed statement, 5b, and Exhibits.)

The answer of the Company avers in place limits 15,251.09, in indemnity 6,728 76; total 21,979.85, as in the bill, and so is the agreed statement of facts. (Record, 59–60.)

If the position of the lands be properly stated, the claim of the Company then is :

That having UNLAWFULLY *received patents for lands, it shall* KEEP THEM, *and without showing any difference in value, obtain* ALSO, *an equal amount of other lands which it might have otherwise rightfully claimed !*

They shall keep who have
And they shall get who can.

And this in a Court of Equity !

To such claim there are abundant objections :

1. *It is utterly destitute of reason or justice.*

A more conscienceless claim could not well be made. It is denied by maxims sanctified by Equity Courts through their whole history. "He who seeks equity must do equity."

The Railroad Company does not offer to restore the lands it has unlawfully received. It has put it out of its power to do so. They are covered by a deed of trust mortgage which asks protection. (Record, 34, 36, 44 ; agreed facts, Record, 60, 61, pars., 48, 49.

The indemnity lands have all been sold by the Company to innocent purchasers. (Record, 56, par. 36.)

All the lands of both classes have been sold by the Company. (Record p. 56, par. 39.)

The rights to lands have been changed by the proceedings in partition between the two companies. And the rights of settlers on the land have intervened.

The Court is therefore required to deal with the lands *as they are.*

Pomeroy, in discussing the maxim above quoted, says:

"The meaning is, that whatever be the nature of the controversy between two definite parties, and whatever be the nature of the remedy demanded, the Court will not confer its equitable relief upon the party seeking

its interposition and aid, *unless* he has acknowledged and conceded, or will admit and provide for, all the equitable rights, claims and demands justly belonging to the adverse party, and growing out of, or necessarily involved in the subject matter of the controversy. It says in effect, that the Court will give the plaintiff the relief to which he is entitled only upon condition that he has given or consents to give the defendant such corresponding rights as *he* also may be entitled to in respect of the subject matter of the suit." (1 Equity Jurisp., Sec. 385.)

"He who comes into a court of equity must come with clean hands. * * * Any really unconscientious conduct connected with the controversy to which he is a party will repel him from the forum whose very foundation is good conscience." (1 Eq., § 404.)

2. The Sioux City Company by accepting lands to which it was *not entitled*, thereby impliedly *agreed* to surrender its claim to an equal amount of lands which it might have rightfully claimed.

The acceptance was in law and equity a *waiver* of any paramount right it might have had to other lands.

At least if not a formal agreement of waiver, it so operated by estoppel. (Pacific R. R. Co. *vs.* Lindell, 39 Mo., 205; Hough *vs.* Buchanan, 27 Fed. Rep., 328.)

3. This claim of the Company is denied upon the equitable doctrine of *election*, which grows out of the maxim above quoted, as to which Pomeroy says:

"The doctrine involves the notion that no man can claim inconsistent rights with regard to the same subject, and that any one who asserts an interest under an instrument, is bound to give full effect to that instrument; he cannot both accept and reject it, or *avail himself of its benefits as to part*, and *defeat its provisions as to other parts*. Election then originates in inconsistent or alternative donations, two gifts, with the intention expressed or implied that one shall be a substitute for the other. The donee is entitled, *not to both*, but to the *choice of either*." (1 Eq. Jurisp., § 395.)

4. The Company has claimed that the Act of 1864 did not make a *coterminous grant*—that is, that the Secretary of the Interior had authority to patent lands whether coterminous with completed sections of the road or not. (See Courtwright case, 21 Wall., 310.)

On this theory, then, no question can arise as to the *class* or *location* of the excess lands patented to the State. It thus, on this theory, becomes immaterial whether the lands now claimed in the bill are within place or indemnity limits.

And in this connection—a little out of place in the order of argument—this view proves, also, that the granting act did not absolutely require patents to issue for full 64,000 acres for any one completed section of 10 miles of road, but that the lands might be apportioned equitably so as to give the Company only a proper proportion of all for each completed section.

THE ACT OF MARCH 3, 1887—24 STAT., 556.

The right of the United States can be asserted wholly without reference to the Act of March 3, 1887. (See Swan & Young Brief, 122.)

This is settled by the case of the United States *vs.* M., K. & T. Ry. Co., 141 U. S., 385, in which it is shown there is an obligation on the Government to secure the rights of settlers on the lands, and that equity jurisdiction is competent to do so.

And even under the Act of 1887, the Court is not denied its equitable jurisdiction to do justice alike to all parties, in doing which the rights of settlers should not be overlooked. The statute is affirmative; there is no repeal or abrogation of equity jurisdiction; it is cumulative in its remedial provisions.

WILLIAM LAWRENCE.

BELLEFONTAINE, OHIO,
December, 1894.

APPENDIX A.

F. 1894—30827. W. O. C. W. J. M.

(*In duplicate.*) J. V. W.

DEPARTMENT OF THE INTERIOR,

S. S. M. GENERAL LAND OFFICE,

WASHINGTON, D. C., March 26, 1894.

The Honorable, THE SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge the receipt, by reference from the Department, on March 19, 1894, for report of a letter from Mr. Wm. Lawrence, of Bellefontaine, Ohio, wherein he asks that all action on pending applications for lands in Iowa, involved in a suit brought by the United States to recover the title to certain lands which were erroneously patented to said State under the Act of May 12, 1864 (13 Stat., 72) for the Sioux City and St. Paul Railroad Company, be suspended, and that the applications for such lands which have been rejected, be restored to their original status.

The lands referred to were patented to the State for said Company, but, the Company having failed to complete the construction of its road, as definitely located, did not earn all the lands so patented and the State withheld from it the excess. Suit was brought for recovery of title and a decision secured in the United States Circuit Court, in Iowa, favorable to the Government, but an appeal was taken and the case is now pending in the United States Supreme Court. The patent, therefore, is still outstanding.

The cases referred to by Mr. Lawrence are applications to enter these lands which it is clear are not subject to entry. It is well settled, that an application to enter land not at the time subject to disposal confers no right upon the applicant, and, therefore, the rejection of these applications cannot in any manner work injury to the claimants, as no right is thereby interfered with, the applications being without any possible effect.

On the other hand, they cumber the pending files of this office, and should, I think, be disposed of as rapidly as possible.

I, therefore, recommend that the request of Mr. Lawrence be denied, and herewith return his letter.

Very respectfully,

S. W. LAMOREUX,

Commissioner.

APPENDIX B.

J. I. H. E. F. B.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, March 31, 1894.

Hon. WILLIAM LAWRENCE, *Bellefontaine, Ohio.*

SIR: I transmit herewith a copy of a report from the Commissioner of the General Land Office upon your letter of March 19, 1894, relative to pending applications for lands in Iowa erroneously patented to the State for the benefit of the Sioux City and St. Paul Railroad Company, and involved in a suit brought by the United States to recover title to the same.

I concur in the views of the Commissioner, as set forth in his said communication, and therefore deny your request.

Very respectfully,
HOKE SMITH, *Secretary.*

APPENDIX C.

List of Lands claimed by Settlers, as furnished November, 1894, by R. P. Jones, of Primghar, Iowa.

		Sec.	*Town.*	*Range*
Bery Oleson	N. W. ¼	5	95	41
Mons Oleson	S. W. ¼	5	95	41
James Eckerson	N. W. ¼	7	95	41
Peter Anderson	S. W. ¼	7	95	41
P. O. Kelstrom	S. E. ¼	7	95	41
Ed Oleson	N. W. ¼	13	95	41
Otto Larson	N. E. ¼	13	95	41
J. T. Daniels	S. E. ¼	13	95	41
R. P. Jones	S. W. ¼	13	95	41
E. J. Pona	N. E. ¼	23	95	41
J. T. Hatch	N. W. ¼	23	95	41
Lottie Manly	N. W. ¼	25	95	41
J. N. Manly	S. W. ¼	25	95	41
Wm. Traver	S. E. ¼	25	95	41
Robt. Huston	S. ½ N. E. ¼	25	95	41
W. E. Young, heir of John Young	N. E. ¼	27	95	41
Wm. Cain	S. W. ¼	27	95	41
John Boge	S. W. ¼	19	95	41
Chas. Gustaveson	N. E. ¼	1	95	42
John Peterson	S. W. ¼	1	95	42
Alex. Peterson	S. E. ¼	1	95	42
W. E. Mooney	N. E. ¼	5	95	42
Fred Beers	S. E. ¼	5	95	42
Wm. Benner	S. W. ¼	5	95	42
Mrs. Widow Weaver	E. ½ E. ½	7	95	42

		Sec.	Town.	Range
August Sands	N. W. ¼	9	95	42
Jonas Haden	S. W. ¼	9	95	42
John Eckerson	S. ½ N. W. ¼	11	95	42
Samuel Wilson	S. E. ¼	11	95	42
John Ker	S. E. ¼	15	95	42
Daniel Behan	N. E. ¼	15	95	42
Chas. Johnson	N. W. ¼	15	95	42
Gus Anderson	S. W. ¼	15	95	42
Crist. Kearn	S. E. ¼	17	95	42
Alfred Anderson	S. W. ¼	17	95	42
J. P. Ostrom	N. W. ¼	21	95	42
Chas. Buck	S. E. ¼	21	95	42
Alfred Smith	N. E. ¼	21	95	42
W. J. March	S. W. ¼	23	95	42
Chas. Walquist	N. W. ¼	23	95	42
Jacob Dickson	S. E. ¼	23	95	42
Soren Anderson	N. E. ¼	23	95	42
Daniel Mullen	N. E. ¼	33	96	42
Jerry Mullen	N. W. ¼	33	96	42
Dennis Mullen	S. W. ¼	33	96	42
John Bisland	N. W. ¼	15	96	42
Wm. Bisland	N. E. ¼	15	96	42
Andrew Harkins	S. W. ¼	15	96	42
James Kelly	N. W. ¼	17	96	42
Laurence Mulligan	N. W. ¼	29	96	42
John Kelly	S. W. ¼	17	96	42
M. D. Finch	S. W. ¼	3	96	42
Chas. Harkins	S. E. ¼	23	96	42
John McKartny	S. E. ¼	3	96	42
Alex. McKever	N. E. ¼	5	96	42
W. L. Powers	S. W. ¼	5	96	42
W. R. Powers	S. E. ¼	5	96	42
Theadore Dockendof	E. ½ S. E. ¼	7	96	42
Jas. Harkins	S. E. ¼	11	96	42
Tim Whalen	N. W. ¼	11	96	42
Geo. McKinny	N. E. ¼	11	96	42
John Harkins	N. E. ¼	23	96	42
Samuel Lyle	S. E. ¼	3	97	42
J. S. Cutsinger	N. W. ¼	3	97	42
J. L. McGrath	N. W. ¼	9	97	42
John Beacon	N. E. ¼	9	97	42
Michael J. McGrath	S. E. ¼	17	97	42
Pat. McGrath	N. E. ¼	17	97	42
Jas. Griffin	S. E. of N. E. & N. E. S. E.	31	97	42

		Sec.	Town.	Range
Pat Kelly	S. E. ¼	33	97	42
Phillip Tanner	S. E. ¼	35	97	42
John Poling	S. E. ¼	7	97	42
W. R. Davis	N. W. ¼	17	97	42
Mary Gonon	N. W. ¼	17	97	42
F. B. Daugherty	N. E. ¼	3	97	42
B. F. Treamor	S. W. ¼	9	97	42
Tom Burns	E. ½ E. ½	25	97	42
Tom Kenedy	W. ½ S. E.	25	97	42
Tom Burns, Jr.	N. W. ¼	25	97	42
William Burns	N. ½ N. E.	25	97	42
Tom Beacom	S. E. ¼	9	97	42

In addition to the foregoing list furnished by Mr. Jones, James Griffin claims as a settler the N. E. ¼ of the N. E. ¼, and the S. E. ¼ of the S. E. ¼ of section 31, T. 97, R. 42, which he alleges was patented by the Government to the Milwaukee Company, *with a provision therein reserving all rights of settlers.*

He also claims 80 acres in the foregoing list in the same section, S. E. ¼ N. E. ¼, and N. E. ¼ S. E. ¼ of section 31, T. 97, R. 42, described in paragraph 21 of the bill as lands withheld from the Company.

William W. Carr, of Cherokee, Iowa, claims as settler under the Timber Culture Act E. ½ S. E. ¼ section 7, T. 96, R. 42. This land is included in paragraph 21 of the bill.

There are other *settlers* represented by other counsel.

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Supreme Court of the United States

OCTOBER TERM, 1895. (No. 20.)

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, et al.,
Appellants,

vs.

THE UNITED STATES OF AMERICA,
Appellees.

PETITION OF APPELLANTS FOR REHEARING.

J. H. SWAN,
GEO. B. YOUNG,
Counsel for Appellants.

H. M. SMYTH PRINTING COMPANY ST. PAUL.

Supreme Court of the United States.

OCTOBER TERM, 1895. (No. 20.)

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, et al.,
Appellants,

vs.

THE UNITED STATES OF AMERICA,
Appellees.

PETITION FOR REHEARING.

To the Honorable the Justices of the Supreme Court:

The appellants in the above entitled cause pray that the court will rehear and reconsider the matters heretofore and on or about the 14th day of October, 1895, decided by the court in said cause, in so far as they involve the following questions:

1. Whether the quantity of land which the appellant railroad company became entitled to have patented for its use on construction and certification of five ten-mile sections of its road, should be determined according to the place limits as fixed

in 1867 and shown on the map Exhibit 8, and the area of such limits as shown in the schedules Exhibits 26 and 27 based thereon, or whether such quantity should be determined according to the place limits shown on the map Exhibit 23, and the area of such limits as shown in the schedules Exhibits 24 and 25.

2. Whether, if the court adheres to its former holding that said quantity is to be determined according to the limits shown on said Exhibit 23, and the said schedules Exhibits 24 and 25, that portion of the opinion and decision which finds the area of odd sections within said limits should not be modified so as to state such area at 244,547.51 acres outside the conflicting limits, instead of at 243,807.41 acres as stated by the court; and so as to state the quantity to which said company is entitled according to said map of 1887, Exhibit 23, at 279,460.50 acres, instead of at 278,720.40 acres as stated by the court in said opinion; which would make the excess received by said company according to the map Exhibit 23, and the limits as shown thereon, 1264.79 acres, and not 2004.89 acres as stated by the court. And whether the said decision should not, in such last case, be modified so as to state the excess according to the said Sparks map (Exhibit 23) either at said quantity of 1264.79 acres, or at the quantity alleged in the bill of complaint (Record, 6, par. 10,) to-wit, 1288.13 acres.

The grounds on which your petitioners pray for such rehearing are certain mistakes of fact into which the court has fallen.

1. In its computation and statement of the area of the odd sections within the place limits shown on Exhibit 23.

2. In its finding that the diagram of withdrawal, Exhibit 8, on which the schedules Exhibits 26 and 27 are based, was a diagram "*originally furnished by the railroad company to the Secretary of the Interior.*"

3. In its finding that the variance between the schedules 24 and 25, based on Exhibit 23, and schedules 26 and 27, based on Exhibit 8, is merely a variance in the area of the particular sections; whereas, in fact, the difference between Exhibits 8 and 23 is wholly a difference in location of place limits; and the variances between the schedules based respectively on those maps arises wholly from the difference in location of the place limits on the respective maps; and the difference between the totals of quantities in the two sets of schedules, arising from variance in statement of the area of any sections or parts of sections, *is less than eleven acres.*

FIRST.

1.

The statement, in the opinion, of the quantities in the conflicting place limits and in the place limits outside the conflict, as shown by Exhibits 26 and 27 (which will be styled the statement of 1867,) based on the withdrawal map, Exhibit 8, is absolutely correct, and shows:

	Acres.
Lands in conflict	70,705.29
Lands outside conflict	247,476.85
Total area of odd sections in place limits	318,182.14
Deduct ½ of area of sections in conflict	35,352.64
Quantity the company is entitled to, according to Exhibit 8 and the statement of 1867	282,829.50
The company has already received	280,725.29
Company yet to receive, were Exhibit 8 and the statement of 1867 adopted	2,104.21

2.

But the statement, in the opinion of the court, of the quantities shown by Exhibits 24 and 25, (which will be styled the statement of 1887,) based on the Sparks map, Exhibit 23, is erroneous in the following particulars:

The statement in the opinion is as follows:

	Acres.
Lands in conflict	69,825.99
Lands outside conflict	243,807.41
Total in place limits according to statement of 1887	313,633.40
The company is entitled to:	
Amount outside conflict	243,807.41
One-half the amount in conflict	34,912.99
Quantity the company is entitled to	278,720.40
Quantity the company has received	280,725.29
Excess received by the company	2,004.89

And your petitioners show that the foregoing statement of the court is erroneous in these particulars, (disregarding an apparent error in the last addition of Exhibit 24 on page 175, which makes the total 69,825.99 instead of 69,825.98.)

The total of Exhibit 25, as given by the court is	243,807.41
An accurate addition of all the items in Exhibit 25 shows that the correct total is	243,907.51
And that the statement of the court is therefore too small by	100.10

The accuracy of our calculation is proved beyond question by a comparison and tables, which will be found *infra*. It can be readily tested by means of the following statement of the totals of each page of the Record covered by the Exhibit.

Page 176.....	12,983.61	Page 181.....	28,308.59
177.....	25,100.36	182.....	27,197.94
178.....	25,083.85	183.....	25,875.44
179.....	26,568.52	184.....	27,774.50
180.....	27,554.00	185.....	17,460.70

According to the statement of 1887, therefore, as correctly computed from the record, the quantities are as follows:

	Acres.
In conflicting limits (disregarding the error of .01)	69,825.99
Outside conflict	243,907.51
Total area of odd sections in place limits	313,733.50
And the company is entitled to—	
One-half the quantity in the conflicting limits	34,912.99
The quantity outside the conflict	243,907.51
Total quantity the company is entitled to by Exhibit 23	278,820.50
The company has received	280,725.29
Excess received by company according to Exhibit 23	1,904.79

Being 100.10 acres less than the amount (2,004.89) stated by the court.

3.

But while the foregoing quantities are correct *according to the Record*, they are erroneous because of *an omission in the Record*.

An examination of page 177 of Exhibit 25 fails to discover any mention of section 23, town 100, range 41. Nor does it appear anywhere in the statement of 1887, either in Exhibit 24 or in Exhibit 25.

It is found in the statement of 1867, in Exhibit 27, Record, 190, where the section is stated to contain 640 acres.

An examination of page 177 is enough to show that the omission of section 23 is an error. Sections 7, 9, 11, 13, 15, 17, 19, 21, 25, 27, 29, 31, 33 and 35 of the same township and range being each of them wholly within the place limits, it is simply impossible that section 23 should not be wholly within those limits.

And a glance at any of the maps in evidence showing the line of definite location, shows that section 23 is so wholly within the place limits that the line of road as located touches one corner of it.

Should it be suggested that Exhibit 25 is stipulated to be correct, and therefore your petitioners cannot show that this section 23 is included in the place limits on Exhibit 23, but the stipulation is conclusive that the limits on the Sparks map do not include this section, we answer (1) the stipulation should not stand in the way of correcting so manifest an error; and (2) that if such effect be given the stipulation, it is fatal to the Sparks map, for a map showing place limits which do not include a section actually touched, if not crossed by the line of location, is so palpably erroneous as to be unworthy of any credit.

4.

This section 23, with its 640 acres, lying outside the conflict, must therefore be taken into account, with the result as follows:

	Acres.
Quantity in place limits according to the Sparks map as stated in Exhibit 24 and 25	313,733.50
Add the omitted section 23, town 100, range 41	640.00
Total in the place limits	314,373.50
And the company is entitled to—	
One-half quantity in conflicting limits	34,912.99
Quantity outside conflict (243,907.51+640=)	244,547.51
Amount the company is entitled to	279,460.50
The company has received	280,725.29
Excess received by the company	1,264.79
Excess as stated by the court in the opinion	2,004.89
Error in the statement in the opinion (=100.10+640)	740.10

5.

In the bill of complaint the quantities, according to the Sparks map, Exhibit 23, are stated as follows, the figures presumably having been furnished by the General Land Office to the Department of Justice.

	Acres.
Odd sections in place limits	314,346.54
One-half the area of the conflicting limits	34,909.38
Amount the company is entitled to	279,437.16
Amount the company has received	280,725.29
Excess received by the company (Record, 6.)	1,288.13

According to the bill there are, therefore, within the limits on the Sparks map—

In the conflicting limits	244,527.78
Outside the conflict	69,818.76
Total, as stated in bill	314,346.54

In the supplemental brief for the United States, (page 12) the quantity the company is entitled to, according to the limits on the Sparks map, is stated at	279,439.80
The quantity received by the company	280,725.29
Amount received in excess	1,285.49

6.

The appellants have never disputed that, *if the limits on the Sparks map are to be taken*, the company has received the excess stated in the bill over the acreage within those limits. The United States, in their argument, claimed no more; their claim was for a few acres less. The appellants had, therefore, no occasion to make and submit to the court an independent calculation of the areas according to

the Sparks map, nor had they reason to anticipate that the court would not accept the undisputed computations produced by the United States and would make an independent computation, and therefore they had no reason to anticipate that the court might thereby arrive at an erroneous result, giving the United States upwards of 700 acres more than they claimed. And so your petitioners say that they have been guilty of no laches or other fault which should preclude them from seeking to have the amount of excess found by the court reduced, by reason of the errors aforesaid, at least to the amount claimed by the United States in their bill of complaint.

SECOND.

In the opinion of the court it is stated (on page 11) that the statement of 1867, being Exhibits 26 and 27, is "*based on the diagram originally furnished by the railroad company to the Secretary of the Interior*, and transmitted by the General Land Office to the local land office on the 26th day of August, 1867."

And your petitioners say that in the passage above and in the opinion italicised, the court has fallen into an error of fact.

1.

The schedules, Exhibits 26 and 27, constituting the statement of 1867, are severally certified to be based on "the diagram of withdrawal transmitted to the local land office at Sioux City, Iowa." Record, 185-6, 188-9, in which last certificate the date of transmission, August 26, 1867, is stated.

This accords with the stipulation of the parties, which states that the "diagram of withdrawal" is Exhibit 8, and that such diagram of withdrawal was "transmitted to the local land office at Sioux City on August 26, 1867." (Record, 55-6, par. 34-5; and see page 51, par. 9.)

This Exhibit 8 is a map or diagram, not printed, but described (Record, 63) as a "certified copy of the diagram showing the limits of the grant by act of May 12, 1864 * * and attached thereto a certified copy * * of commissioner's letter of August 26, 1867, to the local officers at Sioux City, Iowa, ordering a withdrawal of lands."

A copy of this commissioner's letter is Exhibit C, to the answer, and is printed in the Record, p. 33. He writes as follows:

"The Sioux City and St. Paul Railroad Company, under the act of Congress approved May 12, 1864, Statute, vol. 13, p. 72, have filed an authenticated map of the survey and location of their road from Sioux City to a point on the southern boundary line of Minnesota in township 41.

"Enclosed is a diagram showing by green lines the 10-mile limit of the grant 'in place' so far as the same falls to said road in your district, with the 10 additional miles indemnity limits, as indicated by yellow lines, to make up the indemnity.

"You are hereby directed to withhold from sale or other disposal the odd numbered sections within said 10-miles on each side of the road, and also within the additional 10-mile indemnity limits. The register will proceed at once to lay down distinctly in pencil on the township plats the limits of the line of route within the 10-mile limits 'in place' and the 10-mile indemnity limits.

"The vacant, undisposed of, odd numbered sections within the 10-mile limits of said road as indicated in the diagram, inure 'in place' to the state for said company, except wherein there exist pre-emptions having prior inceptions.

"In virtue of the act of Congress, approved March 27, 1854, Statutes, vol. 10, p. 269, the even sections within the granted limits are subject to pre-emptions at $2.50 per acre, and must be dealt with accordingly and in like manner under the homestead law, which reduces the quantity to 80 acres.

"This order will take effect," etc.

It is on this diagram, Exhibit 8, that the statement of 1867, Exhibits 26 and 27, is based. Those Exhibits describe and give the area of each odd section and portion thereof included within the ten-mile limits shown on Exhibit 8 along 50 miles of the line.

2.

Now, there is no evidence whatever that Exhibit 8 was "*furnished by the railroad company*," or that the railroad company had anything to do with its preparation, or furnished any data for it except its own line of definite location, shown on its map of definite location filed as required by law, which line of definite location is copied on Exhibit 8 as well as on the Sparks map of 1887.

In one sense all limit lines and all statements of quantity of land within the limits are and must be based on the line of definite location, and it is in this sense only that the diagram of withdrawal of 1867, equally with the Sparks map of 1887, may be said to be based on the map of definite location. By that line all limits, on whatever theory or measurement they are made, must be determined, and that line must necessarily be the same on Exhibit 8 and Exhibit 23.

But this is very far from making the railroad company the author of the limits shown on the diagram of withdrawal Exhibit 8, or the author or furnisher of that diagram.

3.

We have never understood the United States to claim that the railroad company was the author of or furnished to the department the diagram Exhibit 8, or any map or diagram showing the limits laid down on Exhibit 8, or any limits whatever.

4.

For the company to do so—to assume to perform the function of the Interior Department in fixing the limits of the grant—would be contrary to all precedent, an unheard-of thing.

The practice of the land department, which has been "in continuous operation since 1852," (per Secretary Lamar, in *Scott v. Kansas Pac. Ry. Co.*, 5 Land Dec. 468, 472,) is stated in the case cited, in which the secretary overrules the new plan for fixing limits brought forward by Mr. Sparks, and it is more fully stated in a letter of commissioner McFarland to Secretary Teller, of June 7, 1882, transmitted to the House of Representatives by the secretary on July 10, 1882, in response to a resolution of that body, and printed in House Ex. Doc. 47th Congress, 1st Session, No. 223, and also in "The Public Domain," (prepared by the Public Land Commission, and published by the United States,) Edition of 1883, pp. 898, 899, 900.

The practice of the General Land Office, which was doubtless followed in the case of this road, is thus stated in a letter of Commissioner McFarland to Secretary Teller of June 7, 1882, transmitted to the House of Representatives on July 10, 1882, (House, Ex. Doc. 47th Session, No. 223,) and printed in "The Public Domain," Edition of 1884, p. 899.

The Commissioner says:

"In order to enable you to properly understand the figures hereinafter presented, I deem it necessary to explain as clearly as possible in a written communication the method followed in determining the precise tracts of land which enure to any state for the benefit of a particular grant.

"After the map of the definite location of the line of route of any land-grant road is filed in this office, diagrams are prepared generally upon a scale of 4 miles to 1 inch, each township being thus 1½ inches square. The townships are divided into 36 sections and each section into 16 quarter-quarter sections of 40 acres, thus dividing each township into 576 subdivisions of 40 acres each.

"The located line of route is accurately laid down upon such diagram. Where a grant is of the alternate odd numbered sections for 6 sections in width on each side of the road, a line is drawn with mathematical accuracy *on each side* of the line of route in such manner that said exterior line shall be just 6 miles distant from any and every point on either side of the road. If a road followed a straight line, it would be a simple matter to fix the limits of its grant.

"Nearly all of the land-grant roads, however, follow irregular lines—that is, there are more or less bends or curves in the road; therefore a system was adopted by this department and office of fixing the lateral limits of a road by making consecutive circles representing a diameter (*sic*) of 6 miles along the line of road, and drawing lines tangent to such circles in such manner that the line of lateral limits on each side might be so adjusted as to be equidistant from every portion of the road. Where the line of lateral limit (which is a temporary line made in pencil) so drawn embraces the greater portion of the smallest legal subdivision (40 acres) of a section, the entire subdivision is awarded to the road. Where the minor portion only is embraced within such lateral line, the entire subdivision is excluded. A fixed and permanent line is then drawn, including and excluding the proper tracts accordingly. The limits within which indemnity may be taken are fixed in the same manner. I enclose a diagram, marked A, illustrating the method described.

"An examination of said digram will show that a road by this system could not, even if all the land in odd sections within its limits were subject to its grant, receive the *exact* amount of 6 sections

(3840 acres) per mile, but that in every instance it would receive a trifle less, the loss ranging from one-tenth of one per cent in ordinary cases to one per cent in extreme cases, the loss on a line of road similar to that on the enclosed diagram being 1.09 per cent."

The diagram referred to is not reproduced in the volumes cited; but a diagram showing the method of the Department is part of Secretary Lamar's decision, 5 Land Dec. 468, 473.

5.

While the *usual* practice of the Department was to apply the "give and take rule" in case of each "forty," this was not invariable. Exhibit 8 shows that the limit lines as appearing on it all run on the exterior lines of sections, and a difference between Exhibit 8 and the Sparks map of 1887, is that on the latter the limit lines follow the exterior lines of the "forties."

In the case of the *Missouri, Kansas & Texas Ry. Co.*, 11 Land Dec. 130, the Commissioner, on July 21, 1887, prepared and submitted to the Secretary a map of new limits, which differed from the original limits fixed (like those of appellant in 1867) in that "the old limits were not adjusted to the smallest legal subdivisions," with a difference of a mile, in the limits on one side of the road, arising from other causes. Id. 130, 135-6.

And in the case of the Atchison, Topeka & Santa Fe road, the limit lines was not adjusted to the smallest subdivisions.

Presumably the departure from the ordinary practice was made in each case by the Department for good and sufficient reasons.

6.

The only map or diagram filed by the company was its map of definite location. True, Exhibit 6 to the bill, (Record, 18,) besides containing a copy of the line of definite location in connection with the public surveys, contains also lines, apparently parallel, designated as 10-mile and 20-mile limits.

But these are not the lines shown on Exhibit 8. They do not follow the section lines, and the schedules Exhibits 26 and 27 could not possibly be based on Exhibit 6.

And there is nothing to show that the map of definite location, when filed, contained any such lines. It was required to show only the line as surveyed and staked in connection with the public surveys. To mark limit lines upon it was no part of the company's duty, but would be an invasion of the functions of the department.

And so the certificates to the map of definite location, made by the company's engineer and president and by the governor of Iowa, make no mention of any such lines, do not certify that the map shows any limits, but merely certify that it "shows, in connection with the public surveys, the location of the line of route as actually surveyed," "the location of the line and route * * as surveyed and definitely fixed." Exhibit 5 to Bill, Record, 18-19; Stipulation, par. 6-7, Record, 50-1.

And the Secretary, in transmitting the map to the Commissioner, describes it as "a map, duly authenticated, showing the definite location of the Sioux City and St. Paul railroad." He does not say that it shows any limits. (Stipulation, par. 8, Exhibit 7; Record, 51, 65.)

And so the bill of complaint, to which Exhibit 6 is an Exhibit, does not say that the limits marked on it were on the map of location when filed, or that they were ever put there by the company. It says that the company "located its line * * and filed a map of said location * * * *which said line* is designated on the annexed diagram or plat, Exhibit No. 6." (Record, 4, par. 10.) The pleader is careful not to say that the diagram or plat is *as to those limit lines* a copy of the map of definite location.

The limit lines on Exhibit 6 seem to be a preliminary draft of limit lines. They may have been drawn by means of circles and tangents as described above by Commissioner McFarland. They may be entirely accurate. Each point on them may be just 10 miles distant from the nearest point on the line. There is nothing to show that this is not the case. But whether accurate or inaccurate, they were not furnished by the company, and they are not the lines shown on Exhibit 8.

And if the statement of the court as to the origin of the diagram on which Exhibits 26 and 27 are based is in any way referable to the existence in the record of this Exhibit 6, there has to that extent been a misapprehension of the facts above set forth as to both Exhibit 6 and Exhibit 8.

7.

So far, then, as the decision giving preference to the statement and schedules Exhibits 24 and 25, as based on Exhibit 23, over Exhibits 26 and 27 as based on Exhibit 8, rests on the finding that Exhibit 8 was "*furnished by the company*," it rests on an error of fact.

THIRD.

On page 12 of the opinion printed, it is said:

"In 1887 the Commissioner of the Land Office, having before him the question of how much of the public lands the Sioux City company was entitled to receive, caused an accurate measurement to be made of *the area of the odd numbered sections and parts of sections* lying within the grant made by the act of May 12, 1864, for the construction of the Sioux City road."

And after stating the amount the company could have earned for the 50 miles "on the basis of the measurement of 1887," which amount the court finds to be "only 278,720.40 acres," that is, less by 2004.89 acres than it has actually received and holds or has sold, the court says:

"The result is that if the diagram *furnished by the railroad company* in 1867 be followed, the Sioux City company is entitled to 2104.22 acres in addition to what it has received; whereas, if the measurement of 1887, *made under the direction of the Land Office*, be accepted, that company has received 2004.89 acres more than should in any case have been awarded to it."

The court determines that the latter should be followed, saying:

"Surely it was competent for the land office, when determining whether the Sioux City company was entitled to additional lands, *to ascertain by careful measurement the exact area of the sections* covered by the grant of 1864, and thus determine whether the map *furnished by the railroad company* in 1867 was in all respects accurate."

And on page 13, the court further says:

"The matter to be ascertained is *the number of acres in each one of certain sections, the exterior boundaries of which are not in dispute.*"

1.

It would seem that the court considered that the difference between the two conflicting statements of the area of the land contained in the odd sections resulted from a difference in accuracy between two statements of the areas contained in the various sections.

But an examination and comparison of the schedules Exhibits 24 and 25 on the one hand, and Exhibits 26 and 27 on the other hand, show that they do not differ to any appreciable extent in their statement of *the area of any of the sections* or parts of sections common to both sets of schedules; and that the *net* difference between the two sets of schedules, arising from differences in such statement of area, *is less than eleven acres.*

And such examination and comparison of the two sets of schedules further show that, with the exception of said 11 acres, the difference in total quantities between the two sets arises solely from the fact that certain sections and parts of sections (as to the boundaries and area of which there is no dispute whatever) are included in Exhibits 26 and 27 which are not included in Exhibits 24 and 25; and, conversely, certain parts of sections (the boundaries and area of which are undisputed) are included in Exhibits 24 and 25 which are not included in Exhibits 26 and 27.

2.

This difference between the two sets of schedules arises, of course, from the fact that the lines of place limits shown on the map Exhibit 23, are not in all respects the same with the lines of the place limits shown on the diagram Exhibit 8. And from the

fact (already pointed out) that *one full section of 640 acres, bordering on the line of definite location as shown on all the maps, does not appear in either Exhibit 24 or Exhibit 25.*

The schedules themselves (based on the respective maps) show this. A somewhat careful examination and comparison of the two maps would be required to show just what sections or subdivisions are included in the place limits on either and excluded from the place limits on the other. And the area of no section or subdivision is shown on the map, but all the areas are stated in the respective schedules. And the statements of acreage in each schedule are doubtless copied, with more or less accuracy, from the statements on the township plats.

And therefore, in order to show plainly and show conclusively that the difference between the statement of 1867 and that of 1887 arises solely from the different placing of the limit lines on the maps on which those statements are respectively based, we have extracted from schedules 24 and 26 every item wherein either schedule differs from the other, whether in description or in area, and have set these items opposite each other, with references to the pages of the record where they are found.

We have done the same thing with Exhibits 25 and 27.

Having thus presented to the court every item wherein the schedules differ, we proceed to analyze the table thus presented, and to show in just what items the difference is one of *area* and not of *description*, and in just what items the difference is one of *description* and not of *area*, each schedule containing descriptions of lands not found in the corresponding schedule.

Statement of all items wherein Exhibits 24 and 25 (State or in acreage from Exhibits 26 and 27 (Statement of

LANDS IN CONFLICTING

Exhibit 24, Statement of 1887.

Page of Record	DESCRIPTION.	S.	T.	R.	Acreage.
173	N w n w	1	98	40	40.65
	N e n w and w ½ n w	11	98	40	120
	N w n e, n w s w, and n w ¼	15	98	40	240
	W ½ n e, n w ¼, n ½ s w and s w s w	21	98	40	360
	All except e ½ s e	29	98	40	560
174	N w ¼, n ½ s w, and s w s w	7	97	40	266.40
	All except s e s e	13	97	41	600
	W ½ n w and n w s w	25	97	41	120
	All except e ½ s e	35	97	41	560
175	W ½ n w ¼	10	96	41	80
	W ½ n e, n w s e and w ½	15	96	41	440
	N ½ n w, s w n w, and n w s w	33	96	41	160
	N w n e, n w ¼ and n w s w	5	95	41	238.35
	N w n e & n ½ n w	7	95	41	110.51
	All	3	95	42	629.60
	All	5	95	42	638.02
	N ½ n e and n ½ n w	9	95	42	160
	N ½ n e and n ½ n w	11	95	42	160
	Total acreage				5,483.53

LANDS OUTSIDE

Exhibit 25, Statement of 1887.

176	W ½ n e, w ½ s e and w ½	15	100	39	480
	W ½ n e and w ½	27	100	39	400
	All	15	100	40	640
	All	19	100	40	606.72
177	Not found.				
	N e ¼, s e ¼, e ½ n w ¼, e ½ s w ¼ and s w s w	7	100	42	325.65
	All	31	100	42	640
	N e n e, s ½ n e, e ½ s w, and s e ¼	13	100	43	360
	S e n e and s e ¼	23	100	43	200
	S e s e	27	100	43	40
	W ½ n w	3	99	39	89.81
	W ½ n e and w ½	9	99	39	400
	All except s e s e	17	99	39	600

ment of 1887) based on the Sparks Map differ in description 1867) based on the Diagram of Withdrawal, Exhibit 8.

PLACE LIMITS.

Exhibit 26, Statement of 1867.

Page of Record.	DESCRIPTION.	S.	T.	R.	Acreage.
186	Not found.				
	All	11	98	40	640
	Not found.				
	All	21	98	40	640
	All	29	98	40	640
187	All	7	97	40	626.40
	All	13	97	41	640
	Not found.				
	All	35	97	41	640
188	Not found.				
	All	15	96	41	640
	Not found.				
	All	5	95	41	638.32
	Not found. (See Ex. 27.)				
	All	3	95	42	620
	All	5	95	42	638.12
	Not found. (See Ex. 27.)				
	Not found. (See Ex. 27.)				
					6,362.84

THE CONFLICT.

Exhibit 27, Statement of 1867.

189	All	15	100	39	640
	All	27	100	39	640
	All	15	100	40	640.11
	All	19	100	40	600.72
190	All	23	100	41	640
	Not found.				
	All	31	100	42	630.96
	All	13	100	43	640
	Not found.				
	Not found.				
	Not found.				
	All	9	99	39	640
	All	17	99	39	640

Exhibit 25, Statement of 1887—Continued.

Page of Record.	DESCRIPTION.	S.	T.	R.	Acreage.
178	All	19	99	41	640
179	All except w ½ n w	9	99	43	560
	E ½ n e and s e ¼	17	99	43	240
	S e n w, e ½ s w, s w s w and e ½	31	99	43	473.24
	S e n e, n e s e, and s ½ s e	1	98	44	160
180	N e n e, s ½ n e, s e ¼ and s ½ s w	23	98	44	360
	S e n e and s ½	29	98	44	360
	S ½ n e, s e n w and s ½	35	98	45	440
	All	25	97	43	640
	All	31	97	43	621.30
	All	31	97	44	600.60
181	All	19	97	45	600.04
	All except n w n w	25	97	46	600
	E ½ s w and e ½	35	97	46	400
	All	7	96	44	619.50
182	S e n e, e ½ s e, and s w s e	3	96	46	160
	S e s e	9	96	46	40
	All except w ½ n w	29	96	46	560
	N e n e, s ½ n e, s e ¼ and e ½ s w	31	96	46	360
183	S ½ n w, n w s w	7	95	41	101
	S ½ n e, s ½ n w and s ½	9	95	42	480
	S ½ n e, s ½ n w and s ½	11	95	42	480
	N ½ n w and s w n w	13	95	42	120
	N ½	21	95	42	320
	N ½ n e, N ½ n w	25	95	43	160
	N ½, n ½ s e, n ½ s w, and s w s w	27	95	43	520
	N ½ n w, s w n w, and n w s w	33	95	43	160
	All	19	95	44	637
184	S e n e, n e s e and s ½ s e	1	95	47	160
	N e n e, s ½ n e, and s e ¼	23	95	47	280
	W ½ n e, n w ¼, n ½ s w, and s w s w	5	94	43	371.61
	All except e ½ s e	7	94	43	544.60
185	N w n e and w ½	25	94	44	360
	W ½ n w	1	93	44	78.82
	N ½, n ½ s e	3	93	44	397.44
	Total lands not in conflict				18,387.33

Summary.

	Statement of 1887.	Statement of 1867.	Excess of Statement of 1867.
Lands in conflict	5,483.53	6,362.84	879.31
Lands outside conflict	18,387.33	21,956.67	3,569.34
Totals	23,870.86	28,319.51	4,448.65

fact (already pointed out) that *one full section of 640 acres, bordering on the line of definite location as shown on all the maps, does not appear in either Exhibit 24 or Exhibit 25.*

The schedules themselves (based on the respective maps) show this. A somewhat careful examination and comparison of the two maps would be required to show just what sections or subdivisions are included in the place limits on either and excluded from the place limits on the other. And the area of no section or subdivision is shown on the map, but all the areas are stated in the respective schedules. And the statements of acreage in each schedule are doubtless copied, with more or less accuracy, from the statements on the township plats.

And therefore, in order to show plainly and show conclusively that the difference between the statement of 1867 and that of 1887 arises solely from the different placing of the limit lines on the maps on which those statements are respectively based, we have extracted from schedules 24 and 26 every item wherein either schedule differs from the other, whether in description or in area, and have set these items opposite each other, with references to the pages of the record where they are found.

We have done the same thing with Exhibits 25 and 27.

Having thus presented to the court every item wherein the schedules differ, we proceed to analyze the table thus presented, and to show in just what items the difference is one of *area* and not of *description*, and in just what items the difference is one of *description* and not of *area*, each schedule containing descriptions of lands not found in the corresponding schedule.

Statement of all items wherein Exhibits 24 and 25 (State or in acreage from Exhibits 26 and 27 (Statement of

LANDS IN CONFLICTING

Exhibit 24, Statement of 1887.

Page of Record	DESCRIPTION.	S.	T.	R.	Acreage.
173	N w n w	1	98	40	40.65
	N e n w and w ½ n w	11	98	40	120
	N w ne, n w s w, and n w ¼	15	98	40	240
	W ½ n e, n w ¼, n ½ s w and s w s w	21	98	40	360
	All except e ½ s e	29	98	40	560
174	N w ¼, n ½ s w, and s w s w	7	97	40	266.40
	All except s e s e	13	97	41	600
	W ½ n w and n w s w	25	97	41	120
	All except e ½ s e	35	97	41	560
175	W ½ n w ¼	10	96	41	80
	W ½ n e, n w s e and w ½	15	96	41	440
	N ½ n w, s w n w, and n w s w	33	96	41	160
	N w n e, n w ¼ and n w s w	5	95	41	238.35
	N w n e & n ½ n w	7	95	41	110.51
	All	3	95	42	629.60
	All	5	95	42	638.02
	N ½ n e and n ½ n w	9	95	42	160
	N ½ n e and n ½ n w	11	95	42	160
	Total acreage				5,483.53

LANDS OUTSIDE

Exhibit 25, Statement of 1887.

176	W ½ n e, w ½ s e and w ½	15	100	39	480
	W ½ n e and w ½	27	100	39	400
	All	15	100	40	640
	All	19	100	40	606.72
177	Not found.				
	N e ¼, s e ¼, e ½ n w ¼, e ½ s w ¼ and s w s w	7	100	42	325.65
	All	31	100	42	640
	N e n e, s ½ n e, e ½ s w, and s e ¼	13	100	43	360
	S e n e and s e ¼	23	100	43	200
	S e s e	27	100	43	40
	W ½ n w	3	99	39	89.81
	W ½ n e and w ½	9	99	39	400
	All except s e s e	17	99	39	600

ment of 1887) based on the Sparks Map differ in description
1867) based on the Diagram of Withdrawal, Exhibit 8.

PLACE LIMITS.

Exhibit 26, Statement of 1867.

Page of Record.	DESCRIPTION.	S.	T.	R.	Acreage.
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	All	11	98	40	640
	Not found.				
	All	21	98	40	640
	All	29	98	40	640
187	All	7	97	40	626.40
	All	13	97	41	640
	Not found.				
	All	35	97	41	640
188	Not found.				
	All	15	96	41	640
	Not found.				
	All	5	95	41	638.32
	Not found. (See Ex. 27.)				
	All	3	95	42	620
	All	5	95	42	638.12
	Not found. (See Ex. 27.)				
	Not found. (See Ex. 27.)				
					6,362.84

THE CONFLICT.

Exhibit 27, Statement of 1867.

189	All	15	100	39	640
	All	27	100	39	640
	All	15	100	40	640.11
	All	19	100	40	600.72
190	All	23	100	41	640
	Not found.				
	All	31	100	42	630.96
	All	13	100	43	640
	Not found.				
	Not found.				
	Not found.				
	All	9	99	39	640
	All	17	99	39	640

Exhibit 25, Statement of 1887—Continued.

Page of Record.	DESCRIPTION.	S.	T.	R.	Acreage.
178	All	19	99	41	640
179	All except w ½ n w	9	99	43	560
	E ½ n e and s e ¼	17	99	43	240
	S e n w, e ½ s w, s w s w and e ½	31	99	43	473.24
	S e n e, n e s e, and s ½ s e	1	98	44	160
180	N e n e, s ½ n e, s e ¼ and s ½ s w	23	98	44	360
	S e n e and s ½	29	98	44	360
	S ½ n e, s e n w and s ½	35	98	45	440
	All	25	97	43	640
	All	31	97	43	621.30
	All	31	97	44	600.60
181	All	19	97	45	600.04
	All except n w n w	25	97	46	600
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	All	7	96	44	619.50
182	S e n e, e ½ s e, and s w s e	3	96	46	160
	S e s e	9	96	46	40
	All except w ½ n w	29	96	46	560
	N e n e, s ½ n e, s e ¼ and e ½ s w	31	96	46	360
183	S ½ n w, n w s w	7	95	41	101
	S ½ n e, s ½ n w and s ½	9	95	42	480
	S ½ n e, s ½ n w and s ½	11	95	42	480
	N ½ n w and s w n w	13	95	42	120
	N ½	21	95	42	320
	N ½ n e, N ½ n w	25	95	43	160
	N ½, n ½ s e, n ½ s w, and s w s w	27	95	43	520
	N ½ n w, s w n w, and n w s w	33	95	43	160
	All	19	95	44	637
184	S e n e, n e s e and s ½ s e	1	95	47	160
	N e n e, s ½ n e, and s e ¼	23	95	47	280
	W ½ n e, n w ¼, n ½ s w, and s w s w	5	94	43	371.61
	All except e ½ s e	7	94	43	544.60
185	N w n e and w ½	25	94	44	360
	W ½ n w	1	93	44	78.82
	N ½, n ½ s e	3	93	44	397.44
	Total lands not in conflict				18,387.33

Summary.

	Statement of 1887.	Statement of 1867.	Excess of Statement of 1867.
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Totals	23,870.86	28,319.51	4,448.65

Exhibit 27, Statement of 1867—Continued.

Page of Record.	DESCRIPTION.	S.	T.	R.	Acreage.
191	All	19	99	41	619.20
	All	9	99	43	640
	Not found.				
192	All	31	99	43	612.32
	Not found.				
	All	23	98	44	640
	All	29	98	44	640
	All	35	98	45	640
193	All	25	97	43[6]	643
	All	31	97	43	621.36
	All	31	97	44	609.60
	All	19	97	45	640.04
	All	25	97	46	640
194	All	35	97	46	640
	All	7	96	44	619.58
195	Not found.				
	Not found.				
	All	29	96	46	640
	Not found.				
	All	7	95	41	602
	All	9	95	42	640
	All	11	95	42	640
	Not found.				
	All	21	95	42	640
	All	25	95	43	640
	All	27	95	43	640
196	Not found.				
	All	19	95	44	640
197	All	1	95	47	641.14
	Not found.				
	All	5	94	43	654.02
	All	7	94	43	624.68
	All	25	94	44	640
198	Not found.				
	N½, n½ se	3	93	44	397.94
					21,956.67

This verifies the accuracy of the statement in the early part of this petition as to the actual quantities in Exhibit 25. Thus:

Totals in Ex. 26 and 27, undisputed....		318,182.14
" in Ex. 24.....	69,825.99	
" in Ex. 25.....	243,907.51	313,733.50
		4,448.64

The variance (.01) thus appearing between the difference in the aggregates of the two statements (4448.64) and the difference (4448.65) between the sums of the variant items in the two statements, is owing to the before mentioned error of .01 in the last addition in Exhibit 24, on page 175, and disappears as soon as that error is corrected and the sum of Exhibit 24 thereby reduced to 69.825.98, and the sum of Exhibits 24 and 25 reduced to 313,733.49. The excess of the sum of Exhibits 26 and 27 over the sum of Exhibits 24 and 25 then becomes 4448.65, identical with the excess found by comparison of the variant items, in which items alone the excess must exist.

The correctness of your petitioners' statement of the sum of Exhibit 25, and the correctness of the foregoing list of variant items, is thus confirmed, each proving the other.

3.

The items in the foregoing list may be divided into four classes, viz.:

1. Items where the descriptions in the statement of 1887 and in that of 1867 are identical, but there is a variance in the statement of acreage.

2. Items where parts of the same sections are contained in both statements, but the item in the statement of 1867 includes portions of the section not embraced in the statement of 1887.

3. Items where a section or part of section is included in the statement of 1887, no part of which section is included in that of 1867.

4. A single item where a section is included in the statement of 1867, no part of which section is included in that of 1887.

TABLE I.

Comparison of all Items in Statements of 1887 and 1867 where Descriptions are Identical but Quantities different.

Page of Record.						Area.		Excess of Area.	
1887.	1867.	Description.	S.	T.	R.	List of 1887.	List of 1867.	1887.	1867.
		I. Lands in Conflicting Limits (Exhibits 24 and 26).							
175	188	All.....	3	95	42	629.60	620	9.60	.....
		All.....	5	95	42	638.02	638.12	.....	.10
		II. Lands not in Conflict (Exhibits 25 and 27).							
176	189	All.....	15	100	40	640	640.11	.....	.11
		All.....	19	100	40	606.72	600.72	6.00	.....
177	190	All.....	31	100	42	640	630.96	9.04	.....
178	191	All.....	19	99	41	640	619.20	20.80	.....
180	193	All.....	25	97	43	640	643	.....	3.00
		All.....	31	97	43	621.30	621.36	.....	.06
		All.....	31	97	44	600.60	609.60	.....	9.00
181		All.....	19	97	45	600.04	640.04	.....	40.00
	194	All.....	7	96	44	619.50	619.58	.....	.08
183	196	All.....	19	95	44	637	640	.....	3.00
185	198	N ½, n ½ se	3	93	44	397.44	397.94	.....	.50
		Totals.....				7,910.22	7,920.63	45.44	55.85

Summary.

	7,920.63	55.85
Excess in area of lists of 1867	7,910.22	45.44
over lists of 1887:	10.41	10.41

This verifies the accuracy of the statement in the early part of this petition as to the actual quantities in Exhibit 25. Thus:

Totals in Ex. 26 and 27, undisputed....			318,182.14
" in Ex. 24.....		69,825.99	
" in Ex. 25.....		243,907.51	313,733.50
			4,448.64

The variance (.01) thus appearing between the difference in the aggregates of the two statements (4448.64) and the difference (4448.65) between the sums of the variant items in the two statements, is owing to the before mentioned error of .01 in the last addition in Exhibit 24, on page 175, and disappears as soon as that error is corrected and the sum of Exhibit 24 thereby reduced to 69.825.98, and the sum of Exhibits 24 and 25 reduced to 313,733.49. The excess of the sum of Exhibits 26 and 27 over the sum of Exhibits 24 and 25 then becomes 4448.65, identical with the excess found by comparison of the variant items, in which items alone the excess must exist.

The correctness of your petitioners' statement of the sum of Exhibit 25, and the correctness of the foregoing list of variant items, is thus confirmed, each proving the other.

3.

The items in the foregoing list may be divided into four classes, viz.:

1. Items where the descriptions in the statement of 1887 and in that of 1867 are identical, but there is a variance in the statement of acreage.

2. Items where parts of the same sections are contained in both statements, but the item in the statement of 1867 includes portions of the section not embraced in the statement of 1887.

3. Items where a section or part of section is included in the statement of 1887, no part of which section is included in that of 1867.

4. A single item where a section is included in the statement of 1867, no part of which section is included in that of 1887.

TABLE I.

Comparison of all Items in Statements of 1887 and 1867 where Descriptions are Identical but Quantities different.

Page of Record.						Area.		Excess of Area.	
1887.	1867.	Description.	S.	T.	R.	List of 1887.	List of 1867.	1887.	1867.
		I. LANDS IN CONFLICTING LIMITS (Exhibits 24 and 26).							
175	188	All.....	3	95	42	629.60	620	9.60	.....
		All.....	5	95	42	638.02	638.12	.....	.10
		II. LANDS NOT IN CONFLICT (Exhibits 25 and 27).							
176	189	All.....	15	100	40	640	640.11	.....	.11
		All.....	19	100	40	606.72	600.72	6.00	.....
177	190	All.....	31	100	42	640	630.96	9.04	.....
178	191	All.....	19	99	41	640	619.20	20.80	.....
180	193	All.....	25	97	43	640	643	.....	3.00
		All.....	31	97	43	621.30	621.36	.....	.06
		All.....	31	97	44	600.60	609.60	.....	9.00
181		All.....	19	97	45	600.04	640.04	.....	40.00
	194	All.....	7	96	44	619.50	619.58	.....	.08
183	196	All.....	19	95	44	637	640	.....	3.00
185	198	N ½, n ½ se	3	93	44	397.44	397.94	.....	.50
		Totals.....				7,910.22	7,920.63	45.44	55.85

Summary.

	7,920.63	55.85
Excess in area of lists of 1867 over lists of 1887:	7,910.22	45.44
	10.41	10.41

TABLE II.

Items where parts of the same section are included in both Statements, but the Statement of 1867 includes portions of the section not embraced in the Statement of 1887.

S.	T.	R.	LIST OF 1887. Description.	Area.	LIST OF 1867. Description.	Area.
			(EXHIBIT 24.) LANDS IN CONFLICT.		(EXHIBIT 26.)	
11	98	40	N e n w and w ½ n w	120	All	640
21	98	40	W ½ n e, n w ¼, n ½ s w, and s w	360	All	640
29	98	40	All except e ½ s e	560	All	640
7	97	40	N w ¼, n ½ s w and s w s w	266.40	All	626.40
13	97	41	All except s e s e	600	All	640
35	97	41	All except e ½ s e	560	All	640
15	96	41	W ½ n e, n w s e and w ½	440	All	640
5	95	41	N w n e, n w ¼, and n w s w	238.35	All	638.32
				3,144.75		5,104.72
			(EXHIBIT 25.) LANDS NOT IN CONFLICT.		(EXHIBIT 27.)	
15	100	39	W ½ n e, w ½ s e and w ½	480	All	640
27	100	39	W ½ n e and w ½	400	All	640
13	100	43	N e n e, s ½ n e, e ½ s w and s e ¼,	360	All	640
9	99	39	W ½ n e and w ½	400	All	640
17	99	39	All except s e s e	600	All	640
9	99	43	All except w ½ n w	560	All	640
31	99	43	S e n w, e ½ s w, s w s w and e ½,	473.24	All	612.32
23	98	44	N e n e, s ½ n e, s e ¼ and s ½ s w,	360	All	640
29	98	44	S e n e and s ½	360	All	640
35	98	45	S ½ n e, s e n w and s ½	440	All	640
25	97	46	All except n w n w	600	All	640
35	97	46	E ½ s w and e ½	400	All	640
29	96	46	All except w ½ n w	560	All	640
7	95	41	S ½ n w and n w s w	101	All	602
9	95	42	S ½ n e, s ½ n w and s ½	480	All	640
11	95	42	S ½ n e, s ½ n w and s ½	480	All	640
21	95	42	N ½	320	All	640
25	95	43	N ½ n e, n ½ n w	160	All	640
27	95	43	N ½, n ½ s e, n ½ s w and s w s w	520	All	640
1	95	47	S e n e, n e s e, and s ½ s e	160	All	641.14
5	94	43	W ½ n e, n w ¼, n ½ s w, and s w s w	371.61	All	654.02
7	94	43	All except e ½ s e	544.60	All	624.68
25	94	44	N w n e and w ½	360	All	640
				9,490.45		14,654.16

Of the sections above mentioned, the following portions are in Exhibit 24 as lands in conflict, the whole section being included, as appears above, in Exhibit 27 as lands not in conflict:

EXHIBIT 24.

7	95	41	N w n e and n ½ n w	110.51
9	95	42	N ½ n e and n ½ n w	160
11	95	42	N ½ n e and n ½ n w	160
				430.51

SUMMARY.

Statement of 1887	13,065.71
Statement of 1867	19,758.88
Excess of 1867 Statement	6,693.17

TABLE III.

Lands in Statement of 1887, in Sections, no part of which Sections is included in the Statement of 1867.

Page of Record.	Description.	S.	T.	R.	Acreage.
	IN CONFLICTING LIMITS (Exhibit 24).				
173	N w nw	1	98	40	40.65
	N w ne, n w s w and n w ¼	15	98	40	240
174	W ½ n w and n w s w	25	97	41	120
175	W ½ n w ¼	10	96	41	80
	N ½ n w, s w n w and n w s w	33	96	41	160
					640.65
	OUTSIDE OF CONFICT (Exhibit 25).				
177	N e ¼, s e ¼, e ½ n w, e ½ s w, and s w s w	7	100	42	325.65
	S e ne and s e ¼	23	100	43	200
	S e se	27	100	43	40
	W ½ n w	3	99	39	89.81
179	E ½ ne and s e ¼	17	99	43	240
	S e ne, n e se and s ½ se	1	98	44	160
182	S e ne, e ½ se and s w se	3	96	46	160
	S e se	9	96	46	40
	N e ne, s ½ ne, s e ¼ and e ½ s w	31	96	46	360
183	N ½ n w and s w n w	13	95	42	120
	N ½ n w, s w n w and n w s w	33	95	43	160
184	N e ne, s ½ ne and s e ¼	23	95	47	280
185	W ½ n w	1	93	44	78.82
					2,254.28

Summary.

In conflict (Exhibit 24)	640.65
Outside conflict (Exhibit 25)	2,254.28
Total of lands in sections in Statement of 1887, no part of which sections are in Statement of 1867 (Exhibits 26 and 27)	2,894.93

TABLE IV.

Lands in Sections in Statement of 1867, no part of which Sections is in Statement of 1887.

Exhibit 27. OUTSIDE CONFLICT.

Page of Record.	Description.	S.	T.	R.	Acreage.
190	All	23	100	41	640

The same section whose omission from Exhibit 25, though touched if not cut by the line of location, has been already shown and commented on.

SUMMARY OF TABLES I-IV.

	Statement of 1887.	Statement of 1867.	Excess of 1887 over 1867.	Excess of 1867 over 1887.
Table I	7,910.22	7,920.63	.....	10.41
Table II.	13,065.71	19,758.88	.....	6,693.17
Table III	2,894.93	.....	2,894.93	.....
Table IV	.....	640	.....	640
	23,870.86	28,319.51	2,894.93	7,343.58
		28,319.51		7.343,58
Net excess of acreage of Statement of 1867 over that of 1887:		23,870.86		2,894.93
		4,448 65		4,448.65

The same amount already found by the former computations.

4.

And these tables show plainly that the controversy in the Circuit Court was as to which limits should govern, not as to the acreage of any section of land. The court and the parties alike recognized the fact that the difference between the two maps, and hence in the statements based thereon, was simply a difference in the location of the limit lines. This clearly appears from the opinion of Judge Shiras. (Record, 256.)

And in this court, in the Brief for Appellants (p. 27, par. XXIII) the difference between the two maps and the two statements—viz., that the map of 1887 shows different limits—is set forth. And see page 31, par. XXIX. And on page 91, the argument is "The *limits* devised in 1887 cannot be substituted for those established in 1867. *U. S. v. Hancock*, 133 U. S. 193, 197."

And we have never understood the counsel for the United States to contend that the differences between the schedules resulted from any other cause than the difference in the placing of the limit lines on the two maps.

5.

The real controversy, then, upon the record, was and is whether limits established by the Department in 1867 and continuously acted on by it without question for 20 years in all matters affecting the disposition of lands, should be disregarded in favor of new limits which a succeeding Commissioner, in 1887, 20 years afterwards, has attempted to substitute for them, and this without other proof of

error in the limits established by the earlier Commissioner, or freedom from error, or greater comparative accuracy, in the new limits than the certificate of a still later Commissioner, in 1890, that the map shows the limits "corrected by a more accurate measurement." The statement in the stipulation as to this map of 1887, (Exhibit 23) is that it "is a true copy of the map made by the Land Commissioner of the United States, in the year 1887, showing the lines of location and construction of the said Sioux City and St. Paul railroad company for the aforesaid fifty miles thereof, and also showing the place and indemnity limits of the said grant as *then* ascertained and determined by him for said fifty miles." (Record, 55, par. 31.) The certificate to the list Exhibit 24 is that it is a copy of a list showing the odd sections and parts of sections and the areas thereof in the conflicting 10-mile limits "according to the diagram prepared by the office after an accurate measurement, and showing the corrected limits of the grants." (Record, 172.) And the certificate to Exhibit 25 is to the same effect as to the odd sections in the 10-mile limits outside the conflict. (Record, 176.)

FOURTH.

Your petitioners have felt constrained to make the foregoing demonstration in detail, being mindful that a suggestion of error in the opinion in dealing with the facts requires to be supported by irrefragable proof, even although the ordinary limits of a petition for rehearing be overpassed.

And they submit that by such demonstration it clearly appears that the real question, as between the two limit maps, is not the same which the court has considered and decided, and is so different therefrom as to require for its proper determination a consideration of matters not passed upon by the court, among them the following:

1. *The nature of the function exercised by the Land Department in fixing the limits, and the weight to be given to its action in 1867.*

That the Department, in originally fixing the limits of a railway land grant, exercises a power devolved on it by law, and the existence and exercise of which are essential to the proper administration of the grant, can hardly be disputed. Whether its action amounts to the *determination* of a question of fact by a tribunal having special jurisdiction thereof, (and such would seem to be its character,) or whether such action results in merely *furnishing evidence* of the real boundary of the grant, subject to be contradicted and controlled by other evidence when the question comes before the courts,—in either case the limits once fixed stand on a very different footing from a drawing of limits which is merely the officious work of the company, and which is not,

in itself, without direct proof of its correctness, sufficient or even competent evidence of the true limits.

And in either case, and even though, in some instances, such limits may be thereafter changed, even after the company has built its road in reliance on the limits as showing the quantity of land it was entitled to have patented, and showing the specific sections which enured to the grant, and after the government has sold at double price the lands within the original limits which fall outside the new limits, and has patented for the sole use of the company all the odd sections not otherwise disposed of, and the company has sold the land so patented, and the Department has for 20 years based all its action in regard to both odd and even sections upon the correctness of the established limits, has held them out as accurate to all the world, still it would seem that in any such case such change should not be made without clear proof of grave, or at any rate substantial error, in the original limits.

And when, as in this case, a question arises in the courts between the original limits and the limits as altered 20 years afterwards, it would seem that as each set of limits is the work of the same officer,—each the work of a Commissioner,—and has the same original presumption of correctness, and such presumption in the case of the earlier limits is fortified by 20 years' user and approval, it must be incumbent on the party (whether the United States or the company) assailing the correctness of the original limits, and asserting that a different line is the true boundary of the grant, to clearly prove that the original limits are erroneous. And it would seem

equally clear that error in the fixing of the original limits by the Commissioner of 1867 is not made out by a statement made in 1887, by the then Commissioner, that the limits as then changed by him are more accurate than those made by his predecessor; or by a still later statement, in a certificate made by the Commissioner of 1890, that the map of his predecessor of 1887 is the result of accurate measurement. Neither of these statements shows any reason for preferring the 1887 map to the (presumably equally accurate) map of 1867, unless they are construed as implicitly denying the accuracy of the map of 1867. But on no principle can the determination or the fixing of limits by a Commissioner be made nugatory by a mere certificate of error made by a later Commissioner—especially when the earlier limits have been acted on with approval for 20 years by the whole Department including the Secretary, and there is no proof that the alteration in 1887 was approved by the Secretary, and no specific error in the original limits is shown.

As against limits made up by the company, limits afterwards fixed by the Department would seem to be admissible, not as better, but as the only evidence. The company's work is *in itself* not evidence at all, and need not be shown to be erroneous.

2. *The method of the Department in fixing limits —The impossibility of absolute accuracy—The very slight percentage of difference in area between the original and the new limits.*

The report of Commissioner McFarland already quoted, and the decision of Secretary Lamar, already cited, (5 Land Dec. 468, 469,) show that

these limits, in case of a ten-section grant, are arrived at (1) by describing circles or arcs of 10-mile radius from centres on the located line, and drawing tangents to these arcs and circles, the tangents forming lines parallel to the railroad line; (2) by determining what subdivisions traversed by these tangent lines shall be included in, and what excluded from the limits, and drawing limit lines accordingly, these lines following those of the subdivisions, or in some cases, as in this case, of the sections. This determination is reached (as in the case of swamp lands) by applying a "give and take" rule. If the greater part of the tract traversed by the tangent line is between it and the railroad, it is determined to be within, otherwise to be without, the grant, and the final limit lines are drawn accordingly.

When it is considered that the diagram on which this work is done is ruled on a scale of $\frac{1}{253,440}$, that a mile is represented by a quarter of an inch (Commissioner McFarland's report, *supra*,) and a "forty" is $\frac{1}{16}$ of an inch square; and that none of the lines, whether the line of location or the circles or tangents, are mathematical or even hair lines; that the work of any two draftsmen would almost necessarily vary by reason of differences, however slight, in their attempt to fix one leg of the compasses in the very centre of the located line, in selecting the places on the line for such centres, in the adjustment of the compasses, in the handling of them, in the thickness of the lead with which the circles are described and the tangents drawn, (for this is done with pencil;) and when the inevitable "personal equation" is taken into account; it is easy to see that the work of two equally skilled and careful draftsmen might easily

vary by at least 1/100 of an inch. And since the whole width of a "forty" is but 1/10 of an inch, it is easy to see that when, as is often the case with this road, the line of location of the railroad crossing a "forty," whether at right angles or diagonally, passes within even 1/80 of an inch of the centre, two equally skilled and careful draftsmen might differ in their tangent lines, and hence in the ultimate limit lines, so that A would include a "forty" that B would exclude, while, on the other hand, another "forty" might be included by B and excluded by A.

And then the "give and take" rule necessarily excludes entire accuracy. A "forty" of which 21 acres are within the tangent line is included in the limits as well as one where 39 acres are within. A forty where 21 acres are without is excluded as well as one where 39 acres are without. And Commissioner McFarland says that the method in itself (even when the application of it is theoretically perfect) is necessarily an approximation only, and is inaccurate to an extent varying from 1/10 of one per cent to 1.09 per cent.

If, then, the difference between the area enclosed within the limits of 1867 and that enclosed within the limits of 1887 is but a trifle over one per cent, how can it be said that such difference shows any error in the limits of 1867, shows that such limits are not fully as accurate as those of 1887—shows error sufficient to require the 1867 limits to be cast aside after 20 years of approval and user? Would such difference be deemed sufficient if the case were reversed, and the company was claiming that the limits of 1867 were erroneous because containing

one or even two per cent less acreage than new limits drawn according to the rule of the Department, and, to sustain the claim, introduced as a witness the person who drew the new limits, (perhaps the same man who as draftsman in the Land Office had made all the measurements and drawings for the original official limits,) and such person, testifying, described his process, and testified that every measurement was accurate. Would not the court (if it held such evidence admissible at all) say that, granting that the new limits were shown to be prepared with great accuracy, still they were necessarily but approximate, and that as the difference in acreage enclosed in the two sets of limits was less than two per cent, it was not shown that the limits of 1867 were not substantially accurate, still less that they were not fully as accurate as the proposed substitute for them.

In any case where the "give and take" rule is applied, a variance of one or two per cent might easily occur between an earlier and a later statement of areas, and would not show that the earlier statement was untrustworthy or erroneous. On the approved township plat (drawn on much larger scale than the diagram of railroad limits) the irregular contour line of the wet portion may be so drawn that an accurate computation shows 20.12 acres of wet land and but 19.87 acres of dry land, the parcel containing but 39.99 acres. The whole "forty" is thereupon listed to a state as required by the swamp land grants. (See Rev. St. § § 2479-2481.) Afterwards, and while the State still holds the land undisposed of, the Department causes a new contour

line to be drawn from which it appears, on accurate computation, that the "forty" contains 20.12 acres of dry land and but 19.87 acres of wet land, so that it is not swamp land within the granting act. The acreage of wet land within the first line is .0124 per cent less than that within the second; that within the second is .0126 per cent more than the acreage within the first. In a suit by the United States to cancel the listing and recover the land as not within the grant, where the only proof offered by the United States was a certificate from the Commissioner that the last contour line was accurate, it would seem that a court would hold that such evidence was not sufficient (even if it were of itself competent) to prove that the original contour was erroneous and the land not within the grant.

In this case the acreage of odd sections within the 1867 limits is 318,182.14 acres; within the 1887 limits 314,373.50. The difference is ~~4,448.65~~ 3808.64 acres, being .0119 per cent of the former quantity and .0121 per cent of the latter. Even if on both diagrams the same system had been pursued, and the ultimate limits adjusted to the smallest subdivisions, this slight percentage of difference would be no ground for impugning the accuracy of the diagram of 1867. And when it is considered that the limits on that diagram were adjusted, as in other instances already cited, to the exterior section lines, (doubtless for reasons deemed by the Department at the time to be good and sufficient, and which remained unquestioned for 20 years and are hardly open to question now,) while the limits of 1887 are adjusted to the lines of the "forties," the variance between

them is entirely consistent with the accuracy of the limits of 1867, especially where no specific error is pointed out in any of the measurements on which those limits were based.

In the opinion (near the bottom of page 12) it is said:

"By examining the maps of 1867 and 1887 it was easy to perceive in what particulars they differed; and, by proof, to show which was correct. But the defendant took no proof to discredit the map of 1887," etc.

This your petitioners understand to be based on the finding that the 1867 map was furnished by the company, and not made by the Department. In such case the burden of proving the 1887 map to be erroneous would certainly rest upon the company. But it would seem that the opposite rule must obtain when it appears that the map was made by the Department. The defendant was not called on to prove its accuracy, whether regarded as a *determination* of the true limits or as merely *evidence* of the true limits. In either case the burden was on the United States to prove (1) that the company had had patented for its use more land than the quantity embraced in the odd sections in the place limits outside the conflict, plus one-half the quantity in odd sections in the conflicting place limits, and (2) that the limits fixed by the Department and used without question for 20 years, and according to which all the land was patented, were not the true limits. And, as already pointed out, the map of 1887 and its certificates were not sufficient to put the company to proof of the accuracy of the official map of 1867.

3. *Judicial Notice of Procedure of Interior Department.*

The land grants for railroads comprise more than 150,000,000 acres. Not only the disposition of the granted odd sections, but that of the alternate even sections, depends and has for 40 years been governed by their position with reference to what are known as the "place limits" of the grant. In scores of cases this court has determined questions of conflicting grants, or between the company and pre-emptors, etc., where the "place limits" of the grant were and were declared by the court to be the controlling feature of the case. It would seem, therefore, that the meaning of the term "place limits," and the method of the Department in determining those limits, are matters within the judicial knowledge of the court, and your petitioners have therefore considered it proper to bring before it the report and decision showing that method, though they are no part of the record.

4. *The Views of the Interior Department.*—

The diagram of 1867 being the work of the Department, the case of the *Missouri, Kansas & Texas Ry. Co.*, 11 Land Dec. 130, furnishes a precedent as well as an argument in their favor which would be wanting in case of a diagram of limits furnished by the company.

In 1867 the then Commissioner, Mr. Sparks, besides the general scheme for overhauling the limits of all land grants—a scheme described and rejected by Secretary Lamar in the case already cited, 5 Land Dec. 468—attempted to change the limits of the Missouri, Kansas & Texas road, originally fixed

in 1867, the same year with those of the St. Paul & Sioux City road.

Those limits, too, were, like the limits here in question, adjusted to the exterior section lines, and one change proposed was, like the change attempted here, to readjust them to the smallest legal subdivisions.

Another and greater change was this: The grant was of "every alternate section for ten *sections* in width," so that the company would take the sections in place, whether more or less than a mile square. But the indemnity area was to be measured not by sections but by miles, the clause relating to it having a proviso, in the usual form, "provided that the land to be so selected shall in no case be more than twenty *miles*, from the line of said road." In making the withdrawal diagram a range of sections in fact *two* miles wide was counted as one mile, so that the indemnity limits including that range were a mile, or thereabouts, in excess of "20 miles from the line of said road."

In 1887 the Commissioner submitted "a map showing with precision the lateral limits of the grant," by which it appeared that 21,429.99 acres outside the new indemnity limits had been patented as indemnity lands, and recommended suit to recover them.

The question came before Secretary Noble, who, on August 2, 1890, overruled the Commissioner on several grounds, among them that—"The question here is between the government and the company. If the original withdrawals were erroneous, the fault is due to the government, and not to the company." (P. 136, and see pp. 135–7.)

5. *The Case of U. S. v. Hancock*, 133 U. S. 193, 197.

If the diagram of 1867 and the limits thereon had been the work of the company, this case would have no application. This court has so held.

But as the diagram and limits of 1867 were the official act of the Land Department, in the exercise of powers conferred by law, that case is not without some features of analogy with this.

In that case the boundaries of a grant were designated by a decree or order; in this by an act of Congress.

In that case a survey by the Department, in this case a fixing of limits by the Department, was requisite to determine the actual boundaries of the grant.

In that case the Department made and approved a survey, in this case it fixed and approved the limits.

In that case a patent issued in accordance with the survey, and the defendant, Hancock, though apparently not the patentee, appears to have been, at and prior to the patenting, interested with him, so that he was a trustee for Hancock. (The report says—p. 196—that Hancock's brother, the surveyor, was originally interested in the grant, but had conveyed that interest to Hancock more than eight years before the survey. It does not show that third persons had acquired rights subsequent to the patent, nor is the decision put on that ground.)

In this case patents have issued in accordance with the limits so fixed, to the State of Iowa, but in terms "for the use and benefit of the Sioux City & St. Paul Railroad Company and its assigns."

In that case the United States brought suit against Hancock, alleging that the survey erroneously included lands outside the boundary designated in the order, and that the survey was fraudulently made and its confirmation fraudulently obtained.

In this case the United States sues on the ground that the place limits fixed in 1867 include lands outside the boundary designated in the act of Congress. In the bill charges of fraud in the location (and hence in the limits) are made, but not attempted to be proved.

In that case the United States, to maintain its suit, was required first of all to show that the boundaries of the survey included lands not within the boundaries designated in the order,—that is, that the survey was erroneous. Unless the survey, and hence the patent, were thus shown to be erroneous, proof of fraudulent practices would be of no avail; for if the survey conformed to the order, no fraud had been accomplished, whatever may have been attempted.

In this case, the United States, to maintain its suit as to the quantity of land involved in this petition, was required to prove that the limits of 1867 included a greater quantity of land than was included in the boundaries designated in the act of Congress—that is, that the limits of 1867 were erroneous.

In that case, the error alleged consisted in running one boundary along or near a stream known as Agua Caliente, instead of along a district of the same name. If in that case the *district* had been assumed by the surveyor as the "Agua Caliente" named in the order, and the government's claim had been that in

running the line along the district he had made errors with the result that the survey included .012 per cent more land than would have been included in a correct survey; and if, to sustain this claim, the only evidence produced had been a plat of a later survey, with a certificate that it was the result of an accurate measurement, the case as to the survey would have been on all fours with this. And there would seem no reason to doubt that on such a state of the evidence the court would have said just what it did say in regard to the case as it stood, (and which would seem equally applicable to a case where limits fixed, not by the company, but by the Department, in 1867, are sought to be rejected for error by proof of other limits drawn by the Department in 1887,) to-wit:

"It is not the province of this court to correct a mere matter of survey like that. If made in good faith, and unchallenged as this has been for over fifteen years, whatever doubts may exist as to its correctness must be resolved in favor of the title as patented"

The foregoing considerations would seem to show such material difference in law as well as fact, between the case decided by the court and the actual case on the record, as to render a reconsideration proper.

On account of the errors of the court hereinbefore set forth, and to the end that equity may be done, and that the court may, upon fuller consideration and with the advantage of further argument, (oral or printed as the court may direct,) revise its former opinion, if revision be right and proper, your peti-

tioners pray that the court may be pleased to take the matters herein set forth under careful consideration, and grant a rehearing upon the points on which such decision as to the place limits of the grant and the quantity of lands in odd sections within such limits was based, and grant such other relief and order as in equity and good conscience may be proper.

J. H. SWAN,
GEO. B. YOUNG,
Counsel for Appellants.

The undersigned counsel for appellants do certify that the foregoing petition for rehearing is made in good faith and not for the purpose of delay, and that in our opinion the said petition is well founded in the law and in the evidence and stipulated facts in said cause.

J. H. SWAN,
GEO. B. YOUNG,
Counsel for Appellants.

In the Supreme Court of the [illegible]

OCTOBER TERM, 1895.

THE SIOUX CITY AND ST. PAUL RAILROAD Company et al., appellants, v. THE UNITED STATES. } No. 20.

REPLY TO PETITION OF APPELLANTS FOR REHEARING.

In the Supreme Court of the United States.

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REPLY TO PETITION OF APPELLANTS FOR REHEARING.

I.

The petition for rehearing should not be entertained unless the result, so far as the rights of petitioner are concerned, might be different. If it appear that errors have been committed, a rehearing should not be allowed unless their correction would result in a substantial difference in the decree.

The whole petition goes to but two points:

First. That there was an error in addition which amounted, in result, to a difference of 100.10 acres.

Second. That there was a manifest error in the record which amounted to 640 acres. It is thus claimed that in the aggregate there would be a difference of 740.10 acres. In other words, instead of the railroad company

having received 2,004.89 acres more than it was entitled to, it received only 1,264.79 acres more than it was entitled to. (Petition, p. 4.)

In short, on this point the contention is that there should be a rehearing in order that the court may reach the conclusion that petitioner only received 1,264.79 acres more than it should have received.

This, of course, is wholly immaterial, when the character of the suit is considered. The Government is not suing to recover any of this land, and the result on this point would have been just the same, whether there had been 1 acre, or 2,004.89 acres, received in excess of what the company was entitled to.

The bill and opinion proceed upon the theory that the lands in controversy have not in any way been conveyed to the company, that the Government has a right to have its title thereto quieted because the company can in no way set up any claim to them, and the basis of this whole contention is that the company has already received all the lands that it possibly could have earned. The excess received cuts no figure in it. Any excess, no matter how small, would have been just as effective.

The claim that there was a mistake in addition of 100.10 acres may or may not be true. The additions were carefully made for the Government by an expert accountant. Whether the court relied upon the statement made in the Government brief, or made the additions for itself, is not known, but, in view of what has been said, it does not seem worth while to make the calculation over, as it involves much labor and it would be entirely useless.

As to the mistake claimed in respect of section 23, which it is said was omitted from Exhibit 25, the same may be said with the addition that if it be an error it was doubtless an error of the clerk and of appellant's counsel and not of the court, and the court was justified in assuming that the record was correct. It was doubtless an omission in copying. If it had been material it should have been called to the attention of the court and a diminution of the record suggested. Being entirely immaterial so far as the result is concerned, it is useless to speculate how it occurred or to inquire whether it be an error in fact.

The petition, page 9, shows that these alleged errors are not worthy of consideration, for they both arise in respect of the Sparks map and the exhibits based upon them, and the petition admits that if the Sparks map be taken as the basis of calculation, they have no case.

It is true that the petition says (p. 10) appellant had "no reason to anticipate that the court might thereby arrive at an erroneous result, giving the United States upward of 700 acres more than they claimed."

It is somewhat difficult to perceive what this means, for the court did not give the United States 700 acres of this excess. It did not give a single acre of the excess. It gave them all they claimed, and no more than they claimed, and that was a clear title to the lands which had not been granted.

II.

The main contention of the petition is that the court erred in taking the Sparks map as the basis for estimating the number of acres which petitioner could possibly have earned under the grants.

It proceeds upon an idea that is fundamentally wrong, and upon a misapprehension of what the court actually decided, and the reason for the decision.

If this had been a suit to recover specific lands, to which title had vested, and in respect to which either petitioner or parties deriving title under them had acquired any specific interest, the question of using the Sparks map would have been very different from what it was in this case.

If, under the limits as fixed in 1867, patents to the specific lands sought to be recovered had been issued, then the attitude of the Government in seeking to recover them by virtue of a readjustment made in 1887 would have been very different from what it is in this case, and the question for decision, instead of being the one which the court did decide, would have been the one which the petition for a rehearing presents.

There was no question of upsetting titles, or of divesting rights or interests, or of recovering specific lands held by others under a title from the Government, or of disturbing any man's boundary line.

All of these lands covered by the Sparks map and the original map have been granted to the petitioner, and this bill does not seek to disturb the title to them in any respect, and the opinion in this case does not disturb the title to them.

The question before the court to determine was whether petitioner should receive more lands which had not been granted to it, and in arriving at a conclusion it was

necessary to determine, first, how much land it had received, and, second, how much it was entitled to receive.

There was no dispute as to what it had received. It was an open question as to how much it was entitled to receive, and it was necessary to inquire how much land actually lay within the true limits. This was a question of fact. If, as said above, there had been a question of disturbing title, it might not have been a question of fact, but merely a question of law to be determined upon what the Department had done and what the parties had done relying on this action.

In reaching the question of fact, viz, how many acres it could have earned, and irrespective of the question of title and vested interests, a new survey might have been made and new limits fixed, for it would not have been right to say that this road was entitled to other lands of the Government if it had actually gotten all that it should have gotten.

If the rights of other people or the question of canceling patents actually issued had been involved, the question might have gone off, not upon a determination of whether it had gotten more than it ought to have gotten, but whether the title to what it had gotten and in the way in which it had gotten it should be disturbed, and it might well have been, that under all the facts and circumstances, and in view of the action of the Department, the court would not have disturbed the title, even upon a demonstration that the road had received an excess.

In dealing, however, with the question actually before the court, and reaching a standard to measure the rights of petitioner by, which standard was entirely irrespective of the title to the lands conveyed, the court determined that it would look to the Sparks map, which the stipulation showed is "a true copy of the map made by the Land Commissioner of the United States in the year 1887, showing the lines of location, and construction of the said Sioux City and St. Paul Railroad Company for the aforesaid 50 miles thereof, and also showing the place and indemnity limits of the said grant as then ascertained and determined by him for said 50 miles." (Rec., p. 55, par. 31.)

The certificate to Exhibits 24 and 25 is that they were prepared "according to the diagram prepared by the office after an accurate measurement, and showing the corrected limits of the grant." (Rec., pp. 172, 176.)

The court in its opinion (159 U. S., 368) said: "We are of opinion that the measurement of 1887 should be taken as the basis for determining the area of the odd-numbered sections within place limits."

The court said further:

> Surely it was competent for the Land Office, when determining whether the Sioux City Company was entitled to additional lands, to ascertain, by careful remeasurement, the exact area of the odd-numbered sections covered by the grant of 1864, and thus determine whether the map furnished by the railroad company in 1867 was, in all respects, accurate. By examining the maps of 1867 and 1887 it was easy to perceive in what particulars they differed, and, by proof, to show which was correct.

But the defendant took no proof to discredit the map of 1887, and rests this part of the case upon the general proposition that, after the lapse of so many years, the court should base its decree on the map of 1867, which was accepted by the Government and was not questioned until the measurement of 1887 was made by the General Land Office.

This view is of course entitled to great weight, and might be accepted if the determination of this question of evidence and the acceptance of the measurement of 1887 would affect the rights of third parties to specific lands. The matter to be ascertained is the number of acres in each one of certain sections, the exterior boundaries of which are not in dispute. Now, it would seem that, as between the United States and the railroad company, and for the purpose of ascertaining the quantity in acres of public lands which the company earned, or could have earned, on account of the construction of the 50 miles of road, the latest official measurement of the area of the granted limits, not charged to have been fraudulently made, may be accepted as the best, if not conclusive, evidence.

It is said that a contrary view was announced in *United States* v. *Hancock* (133 U. S., 193, 196). That was a suit to set aside a patent based upon a a decree confirming a claim to certain lands within specified boundaries. The court, following previous decisions, held that "When a *decree* gives the boundaries of the tract to which the claim is confirmed, with precision, and *has become final by stipulation of the United States, and the withdrawal of their appeal therefrom*, it is conclusive, not only on the question of title, but also as to the boundaries which it specifies." That was a case in which the rights of third parties were involved, and it

> is scarcely necessary to say that nothing we have said is in conflict with the principle settled in it (pp. 369, 370).

From the foregoing it is perfectly manifest that the court had squarely presented to it and decided the very question raised in the petition for a rehearing, and commented upon the only decision of this court cited in the petition.

The court carefully differentiated between what was settled in this case, viz, what the court would look to in fixing a standard for measurement, and the principles which the petition seeks to inject into the case.

The whole argument of the petition is applicable to and arises out of a condition which did not exist in this case, and a solution of questions involving rights which could not possibly have been here at issue.

Some stress is laid upon the contention that the court erred in stating that petitioner furnished the diagram of 1867. That is entirely immaterial, for the court did not base its conclusions on that diagram, nor on the fact that petitioner may have furnished it. That was merely an incidental matter, which had nothing to do with the point really decided.

The conclusion was based on the Sparks map, and not because petitioner did or did not furnish the original diagram, but because, in this particular suit and upon the questions here involved, the court thought it was competent to look to the Sparks map because it was made by the General Land Office, and for the purposes as explained.

If the effect of looking to the Sparks map would have been to the advantage of the petitioner and to the disad-

vantage of the Government, the court would, for the reasons it gave, have looked to it just the same no matter whether petitioner furnished the other map or not.

It is not apparent how further argument would change the result unless the court, upon the showing of the petitioner, is doubtful of the soundness of its conclusion that in this character of suits, involving what it does and no more, it is competent to look to a map made by the Land Department for the purposes of reaching a standard by which to measure the amount of land which petitioner could have earned.

On page 40 of the petition exception is taken to a paragraph from page 12 of the opinion as follows:

> By examining the maps of 1867 and 1887 it was easy to perceive in what particulars they differed, and, by proof, to show which was correct. But the defendant took no proof to discredit the map of 1887, etc.

It is said that petitioner understands this to be based on the finding that the 1867 map was furnished by the company. This is by no means the case. The question was not of impeaching the map of 1867 to disturb titles, but to find out a fact by all the evidence before the court, and, inasmuch as the map of 1887 was made more recently and by the Land Department, and by accurate measurement and for the particular purpose of ascertaining this fact, the court preferred to look to it rather than the map of 1867, no question of title being involved.

The table showing a comparison between the two maps is entirely irrelevant, for the court having determined

that the last map was the one to be looked to, the first one cuts no figure in the decision, and there being no evidence to show that the Sparks map is not correct, the facts which it contains will control.

J. M. DICKINSON,
Assistant Attorney-General.